TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 275.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANTS,

vs.

VICKSBURG WATER WORKS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED APRIL 27, 1906.

(20,226.)

(20,226.)

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a UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 79. Equity.

MAYOR — ALDERMEN OF THE CITY OF VICKSBURG, Defendant-, Appellant-,

versus

THE VICKSBURG WATER WORKS COMPANY, Complainant, Appellee.

On Appeal to the Supreme Court of the United States.

TRANSCRIPT OF RECORD.

Caption.

Be it remembered, That at a regular Term of the Circuit Court of the United States in the Fifth Circuit thereof, and in and for the Western Division of the Southern District of Mississippi, at Vicksburg, begun and holden at Vicksburg, Mississippi, on the first day of January A. D. 1906, and which Term adjourned on the 24th day of January A. D. 1906, the Honorable Henry C. Niles, United States District Judge for the State of Mississippi, presiding, the following cause came on for trial and *and* was tried, to-wit:

No. 79. Equity.

THE VICKSBURG WATER WORKS COMPANY

vs.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

b *Original Bill of Complaint.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 79. Equity.

VICKSBURG WATER WORKS COMPANY, Complainant,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant-.

To the Honorable Judge of the Circuit Court of the United States for the Western Division of the Southern District of Mississippi:

Your Complainant the Vicksburg Water Works Company of Vicksburg, Mississippi, a corporation organized and existing under

and by virtue of the laws of the State of Mississippi, exhibits this bill of complaint against The Board of Mayor & Aldermen of Vicksburg, Mississippi, a corporation organized an- existing under and by virtue of the laws of the State of Mississippi, and for cause shows:

1st. That on the 18th day of November, 1886 The Mayor & Aldermen contracted with Samuel R. Bullock & Company their associates, successors and assigns for a supply of water for the City of Vicksburg and its inhabitants in their corporate capacity for a period of thirty years. That on March 1st, 1887 the said Samuel R. Bullock & Co., assigned and transfer-ed unto and by virtue of the 5th section of said ordinance and franchise all of their rights and privileges acquired under said franchise and ordinances to the Vicksburg Water Supply Company, a corporation under the laws of the State of Mississippi.

That the said Vicksburg Water Supply Company constructed the said Water Works plant in accordance with the specifications contained in said ordinances and franchises and the authorities accepted the same and thereafter the Vicksburg Water Supply Company continued to supply water to said City and its inhabitants and strictly and in all respects carried out its contract.

That on the 8th day of August 1900 your orator acquired for a valuable consideration the said water works plant and all of the franchises contracts, contract rights acquired by the said Vicksburg Water Supply Company and Samuel R. Bullock & Company and since that time has continued to furnish the said City and its inhabitants under said ordinances and franchises water in accordance with said contract.

That on the 7th day of November 1900 the defendant gave your orator notice denying liability under said contract.

c That on the 14th day of February 1901, your orator filed its bill of Complaint in this Honorable Court known as equity suit No. 41 setting out in full said contract and obtained an injunction from this Honorable Court restraining the Defendant from in any manner interfering with your orator's rights under said contract and ordinances and requiring the said defendant The Mayor of the City of Vicksburg to perform each and every stipulation contained in said contract.

That on the 23rd of April 1901 your orator filed its amended bill in said cause number 41.

That on the 21st of June 1901 the defend*n*at filed its answer to the original and amended bill and thereafter proof was taken by the complainant and defendant.

That on the 18th day of May 1904 this Honorable Court upon final hearing of said original and amended bill, answers exhibits and proof taken in said cause rendered a final decree perpetuating said injunction and perpetually enjoining the said defendant from interfering in any manner with your orators contract rights under said contract and ordinances, which decree is as follows:

Equity. No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI.

This day this cause came on to be heard in accordance with the motion of Complainant and defendant filed January 12th, 1904 upon the original bill, amended and supplemental bill, exhibits, answer of defendant proof and exhibits and the Court after hearing and attending the evidence and the arguments of counsel and being fully advised in the premises and being satisfied that the Complainant is entitled to the relief prayed for in its original and amended and supplemental bills and for full relief; it is thereupon hereby ordered, adjudged and decreed:

First. that the defendants, the Mayor & Alderman of the City of Vicksburg be and is hereby perpetually enjoined from abrogating and taking away, or from assuming to abrogate or take away the franchises or contract rights of complainant under and by virtue of the ordinances, franchises or contract of said defendants entitled An ordinance to provide for a supply of water to the City of Vicksburg in Warren County, Mississippi, and to its inhabitants contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said City of Vicksburg an option to purchase the said works." Ordained the 19th day of November 1886, approved by John W. Powell, Mayor November 19th, 1886 being the ordinance contract and franchise marked exhibit B to the original bill of complaint, and said ordinance, contract and franchise being specifically and accurately set out in words and figures in the pleadings, which ordinance, contract and franchise was acquired by and is the sole and exclusive property of said Complainant.

d

Second. that said ordinance, contract and franchise be and is hereby declared and held to be in every respect legal, valid and enforce-able and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts, or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by Complainant thereunder.

Third. That said defendant be, and is hereby directed to rescind its resolution and ordinance adopted the 7th day of November 1900 which is in words and figures as follows: "Resolved that the Mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the Mayor & Alderman deny any liability upon any contract for the use of the water works hydrants. That from and after August 1900 they will pay reasonable compensation for the use of said hydrants. That the City Attorney take such action as shall be necessary to determine the rights of the City in the premises."

And also to rescind the ordinance or resolution of said defendant

adopted the 7th day of February 1901 when the said defendant adopted the report of the Committee on water works as set out in the pleadings.

Fourth. That the said defendant refrain from in any manner accepting the benefits of or proceeding under the act of the Legislature of the State of Mississippi approved March 9th, 1900 and from issuing bonds under and by virtue of said act or any other act, or ordinance for the purpose of erecting water works of its own during the period prescribed by ordinance contract and franchise.

Fifth. That the said defendant refrain from constructing waterworks of its own until the expiration of the period prescribed in the said ordinance, contract and franchise, dated the 16 day of November 1886.

Sixth. That the said Defendant be and is hereby required to pay all moneys due or owing, or that *maybe* hereafter be due and owing to said Complainant under and by virtue of said ordinance, contract and franchise.

Seventh. That the said defendant be and is hereby perpetually enjoined from making or adopting any resolutions, or ordinance refusing to pay the contract price of water fixed by said ordinance, contract and franchise until the expiration of the period prescribed in said ordinance, contract and franchise.

Eighth. That the said defendant be, and is hereby enjoined from permitting any further connection for the conveyance of sewerage or excremental matter with the storm sewer or culvert located on Washington Street, City of Vicksburg and the said defendant is hereby directed and commanded within twelve months from this date to extend said sewer or culvert and construct an outlet therefor so as to discharge said sewerage and excremental matter into the Yazoo or Mississippi River below the intake pipe of Complainant, provided that if the defendant is unable to construct or extend said sewer or culvert and construct said outlet within twelve months from this date, it can apply to this Court for good cause shown for an extension of time beyond the said period of twelve months.

Ninth. That said defendant pay the costs of this cause to be taxed.

Ordered, adjudged and decreed this the 18th day of May 1904.

H. C. NILES, *Judge.*"

Your orator now asks leave to file herewith the original bill, amended bill, the answers, exhibits, proof, contract and all other papers contained in said cause No. 41 now on the equity side of this Court and that they may be made an exhibit to this suit as though each and every paper therein contained was fully set out at length in this bill of Complaint, said exhibits being marked "A."

Your orator further shows that by section 13 of said contract it is provided:

"The said Samuel R. Bullock & Co. their associates, successors and assigns shall have the power and right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works and make such rates and charges for the use of the said water as they may determine, provided,

that said rates and charges shall not exceed fifty cents for each one thousand gallons of water."

f This provision is an essential part of said contract set forth as stated fully in said pleadings and the adjudication in said cause as your orator is advised maintaining the integrity of said contract as a whole, and sustaining and upholding the said section 13.

During the pendency of the said suit your Orator would further show that the defendant passed an ordinance or ordinances on the 18th day of April 1904 and on the 7th of December 1903, in the face of said contract and injunction, fixing the rules and regulations under which your orator is to supply water and the rates to be charged for water by your orator at prices less than is fixed in said contract as aforesaid, and enjoined and decreed by this Honorable Court, thereby interfering with your Orators contract, contract rights and seeking to impair the aforesaid contract with your orator and depriving your Orator of its most valuable right under said contract, which ordinance is in contravention of Art. 1 Sec. 10 of the provisions of the Constitution of the United States which says "That no state shall pass any *ex post facto* law impairing the obligation of contracts."

The ordinances are as follows:

"An Ordinance to Fix and prescribe Maximum Rates & Charges for Water Supplied to the City of Vicksburg, Where Measured by Meters, and for Other Purposes.

SECTION 1. Be it ordained by the Mayor and Aldermen of the City of Vicksburg, that hereafter every person, firm, company, corporation engaged in the business of furnishing water to the inhabitants of the City of Vicksburg, where the water is measured by meters and if charged for according to quantity of water so supplied in said city shall not exceed those herein named and fixed, which rates and charges are reasonable and just, that is to say, the following are the maximum rates and charges which may be so collected and made.

100 to 1000 gallons per day	40	cents per M.
1000 to 2000 gallons per day	35	cents per M.
2000 to 3000 gallons per day	30	cents per M.
3000 to 5000 gallons per day	25	cents per M.
5000 to 10000 gallons per day	20	cents per M.
10000 and over gallons per day	15	cents per M.

SECTION 2. Be it further ordained that the maximum rates and charges fixed in the foregoing section shall be for the water actually taken or used; provided a maximum charge of twenty-five cents per month for inspecting and reading meters may be made where the water taken within that time amounts in value to less than

g that amount.

SECTION 3. Be it further ordained that such person, firm, company or corporation engaged in the business of furnishing the inhabitants of said city with water, desire that the water taken and

consumed by such inhabitants shall be measured by meters and charged for according to the quantity of water taken or consumed, such person, firm, company or corporation shall put in and install and maintain such meters at his or its own expense.

SECTION 4. Be it further ordained that any person, firm, company or corporation, or the officer or agent of such, who shall charge collect or receive money at a greater rate than is prescribed in Sections 1 and 2 of these ordinances, for water so furnished and supplied shall be guilty of misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned in the City work house or County Jail not exceeding thirty days or both for such offense.

SECTION 5. Be it further ordained that this ordinance shall be in force and take effect from and after May 1st, 1904 next.

Ordained this 18th day of April 1904.

H. J. TROWBRIDGE,
City Clerk.

Approved this 20th day of April 1904.

W. L. TROWBRIDGE, *Mayor.*

Ordinance to Fix and Prescribe the Maximum Flat Rates and Charges for the Supply of Water to Consumers in the City of Vicksburg, & for Other Purposes.

Be it ordained by the Mayor and Aldermen of the City of Vicksburg:

SECTION 1. That hereafter every person, firm, company or corporation engaged in the business of furnishing water to consumers thereof, being inhabitants of the City of Vicksburg, shall furnish the same to such consumers thereof for domestic and other purposes and uses herein enumerated and specified at rates and charges not exceeding those herein named and fixed, which rates are reasonable and just; that is to say, water shall be furnished such persons, firms, companies and corporations *to* consumers thereof, being inhabitants of the City of Vicksburg for domestic and residence purposes and uses, where no meter has been put in or attached, for ascertaining the quantity of water used at rates and charges not exceeding or above the following named rates and charges per year (which may be collected quarterly or by the month) to-wit.

Residence occupied by one family only two rooms or less.....	$3.00
" " " " " " three " " "	$4.00
" " " " " " four " " "	$5.00
" " " " " " 5 or 6 rooms.....	$6.00
" " " " " " 7 or 8 "	$7.00
" " " " " " 9 or 10 "	$8.00
" " " " " " 11 or 12 "	$9.00
" " " " " " 13 or 14 "	10.00
" " " " " " 15 or 16 "	11.00
" " " " " " 17 or 18 "	12.00
" " " " " " 19 or 20 "	13.00
" " " " " " with more rooms for each additional room.....	30.00

h Residence rates occupied by more than one family in addition to the rates charged for residence occupied by one family only fifty cents per year, for each additional person not a member of the family.

Bath without heating apparatus (in addition to room rate)	3.50
Bath with heating apparatus	3.50
Buggy	3.00
Carriage	2.00
Filling cisterns per 100 gallons	.06
Cow	12.00
Dental Office	15.00
Horse in addition to room rates	2.00
Sprinkling side walk and street and lawn 50 feet and under	9.00
Over 50 feet 15 cents per foot, not exceeding 3/16 inch orifice four hours per day	
Hose for sprinkling gardens, per square foot, ¼ cent but no license less than	2.50
Water Closet, self cleaning (in addition to room rate)	5.00
Urinal in private residence (in addition to room rate)	10.00

The rates and charges herein provided, for water taken or consumed for domestic purposes in private residences, shall embrace and include all water supplied for such purposes in such residences, no matter through what faucets or openings admitted. Nothing in this ordinance contained shall be construed to prescribe or fix rates and charges for manufacturing, steam or other power purposes.

SECTION 2. Any water furnished by such persons, firms, companies and corporations to consumers thereof, being inhabitants of the City of Vicksburg for offices bank stores and other similar purposes where no meter has been put in or attached for ascertaining the quantity of the water used, shall be furnished at rates and charges not exceeding or above the following rates per annum (which may be charged and collected quarterly or by the month) where such water is furnished and supplied in the manner and for the purposes following, to-wit:

Barber Shop, first chair	$10.00
" " , each additional chair	3.00
Bath, Public	15.00
Billard Saloon, each table	3.00
Blacksmith Shop, each fire	3.00
Boarding House, per room	3.00
Brick Work, per thousand	.10
Dyeing and scouring	25.00
Forge	3.00
Foundry, each fire	3.00
Grocery store	10.00
Plastering per square	.01½
Pool Table, each	3.00
School, for every scholar	.08
Store with wash-stand and faucet	12.00
Water Closet in Hotel and other public places	10.00
Urinal not in Private residence	20.00

SECTION 3. Any person, firm, company or corporation engaged in business of furnishing and supplying water to the inhabitants of said city, desiring to charge and receive compensation for water furnished to such inhabitants, according to the quantity of water taken, and consumed, may at the expense of such firm, company or corporation, put in and install meters of a good and reliable kind, and in such cases demand and receive pay for such water according to the quantity of water consumed instead of according to the flat rate herein provided for.

SECTION —. Any person, firm, company or corporation furnishing or supplying water to the inhabitants of the said city, or any officer or agent of any such person, firm, company or corporation who shall demand, receive or collect any money for water furnished and supplied as aforesaid in cases covered by and included on the schedule of rates and charges fixed as a maximum rate herein, greater, and in excess of the rates and charges herein, shall be deemed and held guilty of a misdemeanor and on conviction shall be fined not less than 50 dollars, or be imprisoned in the County jail, or the City work house for not over thirty days for each offense.

SECTION 5. Be it further ordained that this ordinance shall be in force and take effect from, and after the first day of May 1904 next.

Ordained this 18th day of May 1904.

H. J. TROWBRIDGE, *Clerk.*

Approved this 20th day of May 1904.

W. L. TROWBRIDGE, *Mayor.*

"An Ordinance to Require Water Works, Gas and Electric Light Companies to Present Bills, Before Charging Damages for Failure to Pay Them When Due.

SECTION 1. Be it ordained by the Mayor and Aldermen of the City of Vicksburg that it shall be unlawful for any Water Works company, electric light company of Gas company engaged in business in the City of Vicksburg, to charge claim or collect damages or other penalty for failure to pay bills when due, whether it be a refusal to allow discount provided for by such company to secure prompt payment, or be a charge of damages in addition to the regular bills for light, water or gas, until ten days after presenting to the debtors itemized bills for the amount due, and affording them an opportunity at the time of such presentation of paying the same.

SECTION 2. Be it further ordained that any water works company, electric light company, or gas company in business in said city, which shall knowingly and wilfully violate this ordinance, shall be fined in the sum of ten dollars for each offense.

SECTION 3. Be it further ordained that this ordinance shall take effect from and after this passage.

Ordained this 7th day of December 1903.

H. J. TROWBRIDGE,
City Clerk.

Approved this 8th day of December 1903.

W. L. TROWBRIDGE, *Mayor.*

Presented to the Mayor for his approval or disapproval this 8th day of December 1903 and returned to me with his approval thereon this 9th day of December 1903.

H. J. TROWBRIDGE,
City Clerk."

3rd. Your Orator would further show that under these ordinances it is impossible for your orator to do business on account of the fact that in the event it sought to collect its lawful demands from the consumers of water it is liable to be imprisoned and its business wrecked, ruined and destroyed and its power to carry on its business is being seriously impaired because its employees are restrained on account of the threat to deprive them of their liberty and publicly disgrace them.

4th. Your Orator would further show that its patrons are refusing to pay their water rents and only offering to pay at the rates fixed under said ordinances passed by the defendant and that your orator thereby has already been damaged in the sum of over twenty thousand dollars (and without relief bankruptcy of your orator is inevitable). Your Orator would further show that the amount in controversy exceeds two thousand dollars exclusive of interest and cost.

5th. The premises considered Your Orator prays this Honorable Court for an injunction and a decree thereon restraining this defendant from attempting to enforce these ordinances passed by the defendant and annulling the same and holding them for naught and requiring them to do and to perform their contract made in 1886 as aforesaid in this respect and from in any manner interfering with your Orators contract rights under said contract. And for a further decree giving your orator whatever damages may have been sustained by it in a compensatory way by reason of loss on account of the consumers failing to pay their bills on account of the passage of these ordinances, and that the defendant may be summoned at once to answer according to the equity rule of this Court. And your orator prays for such other, further and general relief as may be according to equity and good conscience.

This day personally appeared before me, the undersigned clerk of the United States Court for the Western Division of the Southern District of Mississippi, M. O. Crumpler, Treasurer of the Vicksburg Water Works Company who first being duly sworn states upon oath that the matters and facts stated in the foregoing bill of complaint on his own knowledge are true and those stated on information and belief he believes to be true.

M. O. CRUMPLER.

Sworn to and subscribed before me this the 7th day of January 1905.

L. B. MOSELEY, *Clerk*,
J. H. SHORT, *D. C.* [SEAL.]

The above and foregoing has the following indorsement thereon to-wit: #79 Equity. Vicksburg Water Works Company *vs.* Mayor

& Aldermen of Vicksburg. Bill of Complaint—Filed Jan'y 1/1905. L. B. Moseley, Clerk. J. H. Short D. C.

(NOTE.—Exhibit "A" to this Bill of Complaint, Copy of Equity File No. 41, should here follow.)

k EXHIBIT "A" TO COMPLAINANT'S ORIGINAL BILL OF COMPLAINT.

1 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41. In Equity.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendants.

Original Bill.

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendants.

To the honorable the judges of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Humbly complaining, your orator, The Vicksburg Water Works Company, a corporation duly organized and existing under
2 the laws of Mississippi, and a citizen of said State, and having its principal place of business in Vicksburg therein, brings this its bill of complaint against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation organized and existing under the laws of Mississippi, and located in Warren county in said State.

1st. And thereupon your orator, by the undersigned, its solicitors in this behalf, complains and says that, it and said defendant are organized as corporations as aforesaid and that on the 18th day of March 1886, the said city of Vicksburg, caused its charter to be amended by the legislature of the State of Mississippi, in words and figures as follows, to-wit: "to provide for the erection and maintenance of a system of water works to supply said city with water and to that end to contract with a party or parties who shall build and operate water works," whereby said city was empowered to provide and contract for a system of water works. Which said act was approved on the 18th day of March, 1886, and is set out in full in

the Acts of 1886 of the Legislature of the State of Mississippi, page 695, reference to which is hereby made.

2nd. Your orator further shows that on the 19th day of November, 1886, the said city of Vicksburg received competitive bids for the best terms and conditions for the city and for the franchise rights, etc., S. R. Bullock and Company and other bidders submitting bids; and said bids or offers were referred to the mayor and aldermen of the city of Vicksburg, who thereupon made an investigation of the propositions offered by the respective competitive bidders, and according to the minutes of its proceedings on — day of —— 1886, accepted the proposition of S. R. Bullock & Company, their associates, successors and assigns, as shown per Minute Book — of the proceedings of the board of mayor and aldermen. A copy of which minutes is hereto filed and made a part hereof, and marked Exhibit "A," to this bill. And on the — day of —— 188–, the mayor and aldermen of the city of Vicksburg, pursuant to the said act of the legislature of Mississippi, duly passed and adopted an ordinance for the construction and maintenance of a system of water works, and thereby entered into a contract with said Bullock & Company therefor, a copy of which said ordinance and contract entered into between Bullock & Company, their associates, successors and assigns and defendant is hereto attached and marked Exhibit "B" and made a part hereof.

3rd. Your orator further shows that in accordance with the said contract and ordinance and as provided therein, S. R. Bullock & Company were empowered to organize or create a water works company, and to sell or assign said contract and ordinance to any water works company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof.

4th. Your orator further shows that said Bullock & Company on the — day of —— 1887, chartered and organized under the laws of Mississippi, the Vicksburg Water Supply Company, a corpora-
3 tion, a copy of said charter is hereto attached and marked Exhibit "C" and made a part hereof. And on the first day of March, 1887, said Bullock assigned and sold said contract to the Vicksburg Water Supply Company, now and at all times a going concern, and doing business in Vicksburg, Warren county, Mississippi. A copy of said assignment is herewith filed and marked Exhibit "D" and made a part hereof. And on the — day of —— in accordance with the terms and provisions of said contract and ordinance the said Supply Company being the assignee and *bona fide* owner of the same, and as required by the agreement therein contained, gave defendant notice, accepting the terms and conditions of said ordinance and contract, which notice is duly recorded on page — of the Minute Book, numbered — of said defendant, a copy of which notice is hereto filed and marked Exhibit "E" and made a part hereof. Said notice and acceptance of said ordinance was received and an entry thereof was made in its records, a copy of which entry is hereto attached and marked Exhibit "F" and made a part hereof.

5th. Your orator further shows that Bullock & Company pro-

ceeded to build and construct said water plant; as per specifications in said ordinance, and did build and complete said water works plant as specified in said ordinance, on or about the — day of —— 188-. And after inspection of said water works plant by defendant, the city, on the — day of —— 188-, the water works plant was accepted by said defendant the city, as having been completed in every respect, and having fully complied with all the provisions of said ordinance and contract in every respect.

6th. Your orator further shows that since the completion and acceptance of said water works, which is a period of about fourteen years, there has never been any complaint of any kind or character whatsoever, by word or resolution by the defendant, the city, or otherwise, that the water company had in any manner forfeited or violated the ordinance or contract with the defendant, the city; on the contrary, said defendant, the city, understood and knew that said water company was so faithful in and with respect to execution of its part of the ordinance that said defendant, the city, without question, issued and paid the said water company semi-annually, the price and sum of the rental stipulated in said ordinance up to the time the city fully decided it wanted a water works of its own, which was on or about July —, 1900.

7th. Your orator further shows that heretofore on the — day of March, 1887, said supply company duly made, executed and delivered a deed of trust conveying all its franchises, ordinances and contracts, together with all other property of whatsoever kind or nature, then or thereafter acquired, to secure the payment of its issue, $250,000 of first mortgage bonds; and said deed of trust was thereupon duly recorded in said Warren county; and a copy thereof is hereto attached marked Exhibit "X" and made a part hereof.

8th. And therefore, default having been made in the payment of interest on said bonds, the same was foreclosed on the 8th
4 day of August, 1900, and all the said franchises, ordinances, contracts and property conveyed in said deed were sold, pursuant to the terms of said deed of trust, to the said Vicksburg Water Works Company, which is evidenced by deed made and executed by trustee, recorded in Book — page — of the records of deeds of Warren county, Mississippi. The said Vicksburg Water Works Company is a corporation duly, organized under the laws of Mississippi, and doing business in said city of Vicksburg, and the owner of said water works property and operating the same.

9th. Your orator further shows that on the 18th day of October, 1900, the said Vicksburg Water Supply Company executed a quit claim deed to the said Vicksburg Water Works Company, conveying all rights, titles and interest it might have or hereafter acquire in said water works property, franchises, ordinances and contracts; a copy of which deed is hereto attached and marked Exhibit "G" and made a part hereof.

10th. And in pursuance of the purchase by said Vicksburg Water Works Company of the said property, ordinances, franchises and contracts, the said Vicksburg Water Works Company gave the said city notice in writing of said purchase and assignment, and filed

with said city its written acceptance of the terms and provisions of said ordinance; a copy of which notice and acceptance is hereto attached and marked Exhibit "H" and made a part hereof. And at the same time, said company filed with and furnished to said city, documentary evidence of its title and ownership of said franchises, ordinances, contracts and property.

11th. Your orator further shows that the said city of Vicksburg has since the completion and acceptance of the said water works as aforesaid, continuously received and used the water furnished by said water works and paid for the same during the period of about fourteen years as aforesaid without question or complaint; and said water has at all times been and is now good and wholesome for public and private use and an adequate supply for the needs of said city and its inhabitants; that said water so furnished from the time said city first received and accepted the same up to the present date is, and has at all times been, the same character and supply of water as when first received and accepted by said city by said S. R. Bullock & Company; the said Vicksburg Water Supply Company and the said Vicksburg Water Works Company; and the pressure maintained has at all times been, and is now greater than required by said ordinance and contract.

12th. And there has never been any complaint during said period of about fourteen years as to the character or quality of the water, nor as to the pressure nor as to any other matter from the said city nor any official or other notice that said water works company was not complying in every respect in accordance with said ordinance. But after said city desired to own its own water works and it was ascertained by said city that your orator, The Vicksburg Water Works Company was the owner of said first mortgage bonds, and that by virtue of the sale under the said deed of trust it would become the owner of the said water works on the 8th day of August, 1900, said city without any notice to said water works company that said city claimed said company was not complying with the terms and provisions of said ordinance and contract arbitrarily, unjustly and illegally proceeded, as hereinafter set forth, to pass and adopt an ordinance and resolution, assuming to abrogate and take away the franchises and contract rights of your orator.

13th Your orator further shows that the said city and its officers confederating and conspiring to injure and destroy the credit of the said Vicksburg Water Works Company and to destroy the value of its property assumed to abrogate and take away the franchises and contract rights of said company while denying its (said city's) liability to pay for the water used by it as provided in said contract and ordinance, and persistently and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price.

14th. Your orator further shows that the value of its property is in a large measure dependent upon its franchises and its contracts to supply said city with water, and that the value thereof is seriously impaired by the unjust and unlawful action of said city in as-

suming to abrogate and take away its franchises and contract rights as aforesaid.

15th. Your orator further shows that the said unlawful, unjust and illegal acts of said city and its officers are being done partly pursuant to an act of the legislature of Mississippi enacted on the 9th day of March, 1900, entitled "An act to authorize the mayor and board of aldermen of the city of Vicksburg, to issue bonds to the amount of $375,000, to purchase or construct, equip and maintain a water works system; construct and establish a sewerage system; to purchase ground for, erect and equip a city hall; construct the necessary buildings for a hospital medical college and for other purposes." Said act is contained in Acts of 1900, page 180, reference to which is hereby made, whereby said legislature assumed to annul and abrogate the aforesaid ordinance and contract said city entered into with said Bullock & Company and their assigns, in this that by reason of said ordinance and contract said city has no right within the period of thirty years to engage in the business of supplying water to the inhabitants of said city in competition with said Bullock & Company, or their assigns, notwithstanding which, said act authorizes and permits said city to construct and maintain water works for said purpose, if unable to buy the water works at the arbitrary and inadequate price fixed by said legislative act, and in pursuance of said act, and as required by its terms and conditions, an election was held in said city on the — day of —— 1900, at which it was voted by a majority of the votes cast at said election, that said city should issue its bonds in the sum of $150,000, to buy or construct water works for said city, all of which acts and doings on the part of said city and the legis-
6 lature of Mississippi, impaired the credit of said Vicksburg Water Works Company and depreciated the value of its property, and tend to disable it from carrying on its business, and to coerce it to sell its property for such arbitrary and inadequate price and cast a cloud upon its title, franchises and rights; and said act, or ordinance and resolution and each of them are in contravention of the Constitution of the United States, in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns.

16th. Your orator further shows, as hereinbefore referred to, that on the 7th day of November, 1900, said city passed a resolution and ordinance assuming to abrogate and take away the franchises and contract rights of the said Vicksburg Water Works Company, a copy of which is hereto attached, marked Exhibit "I" and made a part hereof.

17th. Your orator further shows that if such act of March, 1900, and said resolution and ordinance adopted on said 7th day of November, 1900, as aforesaid, are permitted to stand, they will take away one of the most valuable assets of said Vicksburg Water Works Company, which will so materially impair its value as to wreck and ruin said water works in the hands of your orator, The Vicksburg Water Works Company.

18th. Your orator further shows that heretofore during the election to be held on the question of bonding the city for water works, sewerage, etc., as aforesaid, it was deemed admissible to have appointed an advisory board in conjunction with said mayor and aldermen of the city of Vicksburg, as to the wisdom of the expenditure of said bonds; that said advisory board and mayor and aldermen passed a resolution and gave a copy of same to your orator, requesting a reply. A copy of said resolution is hereto attached, marked Exhibit "J" and made a part hereof.

19th. Your orator further avers that the Vicksburg Water Works Company took possession of said water works on August 15th, 1900, and that the city election was held on December 6th, 1900, for city officers, and during the period between August 15th, and December 6th, 1900, many of the municipal office holders and seekers from the mayor of said city down dragged the water works into politics without the consent and wishes of your orator, and openly stated and published in the newspapers in the city, that if elected they would bring suit to cancel the contract with the water company, and charged that your orator had taken snap judgment on the city in buying said water works; copies of said publications are hereto attached marked Exhibits — and made a part hereof. All of which statements and publications were harmful and injurious to your orator, greatly hampering it in carrying on its business.

20th. Your orator alleges the fact to be that the incorporators of said Vicksburg Water Works Company commenced negotiations to buy the water plant in the fall of the year, 1899, and on January 5th, 1900, made a proposition in writing to buy the plant, which date was prior to the introduction of said act in the legislature, authorizing the city to buy or construct a water works system, and your orator never knew that the city had any desire whatever to own a water works plant of her own at the time of such negotiations.

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21st. Your orator further shows that during said municipal election, rumors of damaging effect and that were utterly false began to travel the streets of defendant, the city, and were poured into the uninformed public ear, and met great favor with the newspapers of the city having a wide and influential circulation in said city, and through their columns the papers would themselves, and also by its citizens, some of whom were candidates for office, write inflammatory and untruthful articles about your orator, all of which has given birth to an unjust public disfavor and unrighteous prejudice, which said rumors and articles have greatly injured your orator, and your orator is informed, believes and charges the fact to be that said rumors and articles were originated and circulated by officers, agents and confederates of said city, pursuant to said conspiracy and confederacy against your orator.

22nd. Your orator further shows that some time after the Vicksburg Water Works Company had bought the water works plant, and after it was well known that the city wanted the water works, or one of her own, one of the leading citizens of Vicksburg, for himself and associates offered to buy the waterworks from your

orator at a price exceeding $150,000, and your orator charges the fact to be that this same citizen is today one of the advisory board, and that he is acting in that capacity with said board in conjunction with the mayor and aldermen to coerce and force your orator to sell said water works at a price less than what he himself and associates offered to pay your orator.

23rd. Your orator further shows that suit was commenced by the city of Vicksburg in the chancery court of Warren county, Mississippi, to have declared void, said ordinance or contract your orator has with the city, at the instigation of said board of mayor and aldermen and said advisory board, and in about sixty days from the filing of said suit your orator receiver a communication from said associates of said leading citizen to know if your orator now cared to sell the water works. Whether or not said leading citizen and associates are confederating in conjunction with said mayor & aldermen in said suit, your orator is unable to state. A petition for the removal of said suit to this court was filed by complainant herein because it involved a Federal question and the same is now pending in this court upon motion to remand, a copy of the bill of complaint is hereto attached and marked Exhibit "Y" and made a part hereof.

24th. Your orator further shows that on the 29th day of Feb'y, 1890, the defendant caused to be passed an act of the legislature of the State of Mississippi, entitled "To provide means for the construction of a sewerage system in the city of Vicksburg and to issue
8 bonds therefor," which act will be found on page 507 of the sheet acts of said body, reference to which is hereby made, and this act has never been repealed by any subsequent legislation of Mississippi.

25th. On the 9th day of March, at the instance of the defendant, the legislature of the State of Mississippi, passed an act as aforesaid, entitled "An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of $375,000. to purchase or construct, equip and maintain a water works system," etc., while said contract and ordinance entered into with said defendant, the city, was still in force, and the conditions thereof being performed by both parties without complaint from either. Your orator charges that said act of March, 1900, is unconstitutional for many reasons, which will be shown to the court on the hearing of this cause, meaning as follows to-wit:

1st. Because it arbitrarily places the prices and value upon another's property, in which defendant has no interest.

2nd. Because the legislature of the State has by said act passed an *ex post facto* law impairing the obligations of a contract.

3rd. Because said act is in conflict with the act of 1890 page 507 providing for the construction of a sewerage system, because the act of 1900 does not in accordance with section — of the constitution of Mississippi repeal said act of 1890.

4th. Because said act of 1900 is local in character, when the provisions contained therein could be provided for by the general law.

5th. Because it abuses the credit of the city if these bonds are permitted to be issued and sold.

26th. Your orator would respectfully represent that about 1870, the defendant constructed a large underground gutter of about five feet in diameter on Washington street of defendant and through the most populous part thereof for about one half mile for the purpose of conducting away the surface water of said defendant into the Mississippi river, and which was used for that purpose solely until afterwards as aforesaid in 1887 as aforesaid the Vicksburg Water Supply Company as aforesaid, built its pumping station and intake pipe on the Mississippi river below the defendant which arranges the pumping station of your orator with reference to the mouth of this gutter so as to locate it about two miles up said river above said station. Some time after the Vicksburg Water Supply Company was put in operation, the citizens and inhabitants of defendant along or near Washington street began to connect the water closets on their residences, hotels and stores with this gutter through the acquiescence and consent of defendant, to that extent until it has been converted into a partial sewer for said street for said water closets of said residences, stores and hotels, and if defendant permits a general connection with this gutter for such purposes the sewerage thereof will pollute the waters of said river to that extent so as to make it unfit for domestic and drinking purposes as provided by said contract and ordinance with said city, and unless the use thereof is prohibited by defendant, your orator will be compelled to cut off and
9 prevent the use of its water for such closet and sewer purposes by said residences, hotels and stores, in order that good and wholesome water may be delivered to said city and its inhabitants as is being now delivered.

27th. Your orator further charges that it has no adequate remedy at law for the damages which it has sustained by reason of the aforesaid conspiracy and unlawful acts of the defendant and others, and also that it has no remedy at law to enjoin and restrain a continuation by defendant of said unlawful actings and doings; and it charges that the continuance of said actings and doings will injure and damage your orator in the sum exceeding the amount of ten thousand dollars, and that the acts of defendant aforesaid have already damaged the complainant in its business in the sum exceeding said amount.

28. Your orator now especially shows that said ordinance or franchise Exhibit "B" provides that the defendant, the city shall pay to your orator semi annually to-wit: January 1st and July 1st of each year, the price or prices named in said ordinance for the fire hydrants as stipulated and set out herein.

29th. Your orator especially complaining shows that the defendant, the city, is now refusing to pay your orator the amount due and payable on January 1st, 1901, and only offers to pay an inadequate amount or price and under specific conditions, that if accepted by your orator would commit your orator to a false position with reference to its contract with the city; that the defendant, the city, by this scheme is confederating, conspiring and endeavoring to coerce

your orator to commit an act whereby the ordinance would be annulled, notwithstanding the fact that defendant has already collected from the tax payers of defendant, the full amount with which to pay this demand.

30. Your orator further shows that we have, and did offer and now offer to the defendant, the city, in writing assuring the city that the payment for said fire hydrants due on January 1st, 1901, as stipulated in said ordinance should in no wise prejudice said city in a suit or suits whatever pertaining to this matter; your orator agreed to do this, that in this way your orator would be able to maintain itself and continue to furnish water for fire protection to said city, and that we were, and are now willing to do so, but your orator especially alleges that it cannot keep up the enormous expenses and pay fixed charges and maintain itself, and continue to deliver water for fire protection etc., unless the defendant, the city pays for the water as received and used by it. A copy of the proposition made to water committee, city attorney and board of mayor & aldermen is hereto attached and marked Exhibit "K." and made a part hereof.

31. Your orator further shows that the water committee (after the bill was referred back to them), called a special meeting of the board of mayor & aldermen on Feb'y 7th, 1901, and made the following report, to-wit:

"To the honorable board of mayor & aldermen:

Report of the Committee of Water Works upon the Matter of the Accounts of the Vicksburg Water Works Company Referred to it.

GENTLEMEN: Your committee would respectfully report in reference to the above subject that they have fully considered the question of the accounts presented by said company. On the first day of October, 1900, the board of mayor & aldermen passed a resolution denying any liability to said company by virtue of the contract entered into with Samuel R. Bullock & Company, but for the use of hydrants they would pay a reasonable and just compensation. Our powers therefore in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary that we should go into any exact estimate of what is reasonable and just and therefore have proposed to said company that we will pay them from the 15th day of August, up to the day of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate of $50.00 per hydrant, which we consider a most liberal rate; it being understood however that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit; neither should these payments be deemed in any way a waiver of the rights of the city in the premises.

(Signed) D. A. CAMPBELL,
T. M. CAUGHLIN,
W. O. SMITH,
Committee."

32. Your orator would show that said board of mayor & aldermen received and adopted the water committee's report in words and figures as follows: "That the account be allowed on the basis and conditions of the committee's report." Your orator respectfully shows that said report of the water committee and the adoption of the same by the board of mayor & aldermen is so worded and hedged about that if your orator should accept the payment as stipulated therein, it would acknowledge thereby or break the contract, in this, the defendant, the city, reserving to itself all the rights in words and figures as follows; "It being understood however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit, neither would this payment be deemed in any way the waiver of the rights of the city in the premises." But no rights are reserved to your orator, and therefore as before stated, if partial payment was accepted under the terms and conditions specified in said committee's report and mayor & aldermen's adoption, your orator would thereby be doing an act that could and would be construed the ending or breaking of the contract.

11 33. Your orator now shows that it cannot accept the proffered partial payment under the terms and conditions as specified in said water committee's report and mayor & aldermen's adoption, and that unless the defendant, the city, pays your orator, your orator will be unable to maintain itself and keep up the great expenses necessary to operate such a plant, discharge fixed charges as aforesaid, and while your orator is willing and anxious to furnish water for fire protection etc., and fully carry out said contract, and have offered so to do, and now offer so to do, but as before stated if defendant, the city, continues to refuse to pay for said water on a basis that each and all rights both for your orator and defendant, the city, may be equally and equitably reserved until this honorable court can decide the case on its merits, your orator will be unable to maintain itself and furnish water for fire protection etc.,

Wherefore, for as much as your orator can have no adequate relief at law but only in a court of equity, where matters of this sort are cognizable and relievable, and to the end that defendant may be required to answer, but not under oath (answer under oath being hereby expressly waived) each and all of the allegations hereinbefore stated, and may be required to desist the further infringement and invasion of your orator's lawful rights and may be decreed from constructing or acquiring and operating a system of water works in competition with your orator's water works, and to the end that your orator may have such other and further relief as unto your honors may seem proper, wherefore your orator prays;

I. That defendant may be compelled to answer the premises, (not under oath).

II. That the defendant may be enjoined, perpetually, from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from

carrying on its business and to destroy its credit and the value of its property and to coerce said complainant to sell its water works to defendant for an inadequate price, and that defendant may be enjoined and restrained from otherwise carrying on the unlawful conspiracy aforesaid entered into by it, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy, and that said act of the legislature of Mississippi adopted on the 9th day of March, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900, be decreed to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and to be invalid and of no effect as against your orator.

III. May it please your honors to grant unto your orator a writ of injunction issuing out of this honorable court, under the seal thereof, directed to the defendant, its officers, attorneys and servants, and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from
12 carrying on its business and to coerce said complainant to sell its water works to defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy aforesaid entered into, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy as well as for a decree requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer.

IV. May it please your honors to grant unto your orator not only a writ of injunction, but furthermore a writ of *subpoena ad respondendum* directed to the defendant, namely The Board of Mayor & Aldermen of the City of Vicksburg (corporation as aforesaid); and thereby to command them upon a day certain therein named, to be and appear in this honorable court to answer the premises and to perform and abide by such further order of the court as to your honors may seem meet, to the end that your orator may have full and adequate relief in the premises.

V. Your orator would further pray for a decree against defendant, for all monies due it under said ordinance with 6% interest per annum from the date of their respective maturities until it is paid.

VI. The premises considered, your orator therefore respectfully asks this honorable court for an injunction restraining defendant from perpetuating any minutes, or ordinances or resolutions of its own whereby it denies liability or seeks to annul or refuses to pay your orator contract price for water and that defendant be compelled to pay your orator for water used by them as per the ordinance price and to continue to do so until this cause is heard upon its merits and that the rights of all parties concerned may be preserved.

VII. May it please your honors to further grant to your orator such other and further relief as the facts aforesaid may demand, and

as may be in conformity with equity and good conscience and in accord with the practice in this honorable court as a court of equity.

And your orator will ever pray, etc.

VICKSBURG WATER WORKS COMPANY,
By S. S. HUDSON &
A. N. EDWARDS, *Its Solicitors.*

STATE OF MISSISSIPPI,
Western Division of the Southern Judicial District of Mississippi, City of Vicksburg, ss:

M. O. Crumpler of lawful age being duly sworn on his oath says that he is secretary, treasurer and manager of Vicksburg Water Works Company at the city of Vicksburg, Mississippi, and that the matters and facts stated in the foregoing bill of complaint of the Vicksburg Water Works Company are true, except as to such charges as are therein stated to be upon such information and belief;
13 and as to those he believes the said charges so made to be true; and further affiant sayeth not.

(Signed) M. O. CRUMPLER.

Sworn to and subscribed before me, the undersigned, this 13th day of February, 1901.

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

Restraining Order on the Above.

Upon complainant entering into bond in the sum of ($8000) eight thousand dollars the clerk will issue a restraining order as prayed for in the foregoing bill of complaint.

H. C. NILES, *Judge.*

Feb'y 14th, 1901.

EXHIBIT "A."

CITY HALL, *November 12th*, 1886.

A special meeting of the board of mayor and aldermen to further consider the proposition of the water works company, and to receive and entertain other proposition looking to the erection of a system of water works in our city was held on the above date.

Present: John W. Powell, mayor.

Aldermen, Kuhn, Ehrman, Rice, Anderson, Walsh, Baum and Crayton.

On motion of Alderman Baum, it was resolved that if any company or companies desiring to erect a system of water works in our city had a proposition to submit, said company or companies be requested to present their proposition.

After considerable discussion on the part of Major L. W. Magruder attorney for, and Mr. H. A. Hungerford agent for Samuel R. Bullock & Company of New York, Mr. Smedes, A. B. Pittman and Capt. Butts representing the Vicksburg Water Works Company, and Alderman Baum and other aldermen on the part of the board as to what would be the conditions if the proposition of Samuel R. Bullock & Company would be received; the Vicksburg Water Works Company and some members of the board claiming the right of said Vicksburg water works to submit another bid after the bid of Samuel R. Bullock had been received and opened, Major Magruder and Mr. Hungerford denying the right of said Vicksburg Water Works Company to submit another bid after the bid of Samuel R. Bullock & Company had been received.

On motion of Alderman Baum the resolution offered by him requesting any company or companies having bids to present for water works be requested to present them was reconsidered by the following vote:

Ayes.—Aldermen Kuhn, Ehrman, Rice and Baum.

Nays.—Walsh, Crayton and Anderson.

14 On motion it was resolved that the board invite bids for the construction of water works at its meeting on Monday night with the following vote:

Ayes.—Kuhn, Ehrman Rice, Anderson, Walsh & Baum.

Nayes.—Crayton.

JOHN W. POWELL, *Mayor.*

OFFICE OF BIRCHETT & GILLAND, *Nov. 18th*, 1886.

A special meeting of the board of mayor & aldermen to receive the report of the street committee on water works was held on the above date,

Present: Honorable John W. Powell, mayor, Aldermen Kuhn, Rice, Anderson, Walsh, Demarchi, Baum and Crayton,

Absent: Alderman Ehrman.

The street committee through its chairman, Alderman Baum, reported that after having considered the propositions of the Vicksburg Water Works Company and Samuel R. Bullock & Company of New York, they arrived at the conclusion that the latter proposition was the better of the two, and after conferring with Mr. Hungerford, agent of the said Samuel R. Bullock & Company making certain changes and modifications in the original proposition as submitted by the said S. R. Bullock & Company on November 15th, 1886, submitted as their final report an ordinance, entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works" which was read the first time and under a suspension of the rules, was read the second and third time by its title, and adopted with the following vote.

Ayes.—Aldermen Kuhn, Rice, Anderson, Walsh, Demarchi and Baum.

Nays.—Alderman Crayton.

On motion it was resolved that the thanks of this board are due and hereby tendered to the street committee for the able manner in which they have settled the question of water works.

* * * * * * *

(Signed) JOHN W. POWELL, *Mayor.*

15 EXHIBIT "B."

An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors, and assigns, for a supply of water for public use, and giving the said city of Vicksburg an option to purchase the said works.

Be it ordained by the mayor and aldermen of the city of Vicksburg.

SECTION 1. That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock and Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for the conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said Samuel R. Bullock & Company, their associates, successors and assigns shall exercise the greatest care and diligence in the use of the said streets, alleys, public squares and other public places and shall cause no unnecessary obstruction of or interruption to the public travel over or upon the same or any injury to or interference with any pipes, mains or sewers which may now be lawfully located beneath the surface thereof.

The said Samuel R. Bullock & Company, their successors, associates and assigns, shall take every precaution to provide against danger to property life and limb by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night and after

the completion of the purpose for which the said streets, alleys, public squares and other public places may be used they shall be restored to their former condition as near as may be without unnecessary delay, and they shall at their own cost and expense relay their mains and pipes when made necessary by a change of grade in any street ordered by the board of mayor & aldermen of said city if there was no established grade for such street at the time said
16 mains and pipes were laid. On failure to restore such streets, alleys, public squares and other public places as aforesaid, the mayor & the aldermen of the city of Vicksburg may on reasonable notice to them by any city officer, cause the same to be restored and recover the costs and expenses thereof from the said Samuel R. Bullock & Company, their associates, successors and assigns in any court having jurisdiction of the amount.

The said Samuel R. Bullock & Company, their associates, successors and assigns hereby agree to hold the mayor & aldermen of the city of Vicksburg harmless from any liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the said system of water works shall be as follows:

Mains.—The pipe system shall consist of not less than twelve (12) miles of mains of sizes varying from sixteen inches (16) to six (6) inches in diameter. The pipe used shall be of the best quality of cast iron pipe and each pipe shall be tested at its place of manufacture to a pressure of three hundred (300) pounds to the square inch. All pipe shall be coated with Dr. Angus Smith's preservative varnish and shall be laid and jointed by competent mechanics, and in the best possible manner.

The streets along which *it* and at what points said mains shall be laid shall be first designated by the board of mayor & aldermen of the city of Vicksburg.

Hydrants.—The hydrants shall be double nozzle fire hydrants with nozzles fitted to connect with the hose couplings now in use by the fire department of said city of Vicksburg.

The board of mayor & aldermen of the city of Vicksburg shall within thirty days (30) from the date of the final passage of this ordinance designate the points on the line of distributing mains at which the hydrants shall be erected.

Gates and valves.—All necessary gates and valves shall be provided and located at such points on the lines of mains as will enable certain districts to be cut off and isolated when repairs are needed without depriving other districts of their full supply.

Pumps.—The pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours against the pressure needed to supply all parts of the pipe system with an abundant supply of water. They shall be so arranged as to be operated separately or together.

Boilers.—The boilers shall be of ample capacity to operate the

pumping engines and shall be so arranged as to be operated separately or together as may be required.

Stand pipe.—There shall be a stand pipe or a reservoir of sufficient capacity and height or elevation to furnish an ample supply of water for comsumption at the highest points along the line of the mains.

Pump house.—The pumps and boiler house shall be a
17 substantial stone or brick building of ample size for the pumps and batteries of boilers. The smoke stack will be of brick of the size needed to operate the boilers.

Source of supply.—The water shall be taken from such point as may be free from all sewerage contamination, and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption.

SECTION 3. In consideration of the public benefit and the protection to property resulting from the construction of the said system of water works the mayor and aldermen of the city of Vicksburg hereby rent of the said Samuel R. Bullock & Company their associates, successors and assigns not less than eighty (80) double nozzle frost proof fire hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth days of January and July. After the first year of the operation of said water works the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five (65.) dollars payable as aforesaid and for the remainder of said period of thirty (30) years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor & aldermen of the city of Vicksburg shall be at the annual rate of fifty ($50.) dollars for each hydrant payable as aforesaid during the unexpired period of the said original term of thirty (30) years. Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters only provided that for fire practice and flushing sewers no more than two hydrants shall be opened at one time and not more than once in each week.

SECTION 4. Water shall be furnished free of charge to the public schools, and all other public buildings used exclusively for city purposes and for filling public cisterns and the city hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid to within seven hundred and fifty (750) feet of said hospital. And water shall also be supplied free for six (6) drinking fountains with openings for man and beast and one public fountain to be erected by said Samuel R. Bullock & Company in such place on the line of mains as the board of mayor & aldermen of the city of Vicksburg may direct.

SECTION 5. The said Samuel R. Bullock & Company, their asso-

ciates, successors or assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired hereunder. Provided that such assignment shall not invalidate or affect the bond required by section seven (7) hereof and no assignment thereof shall be
18 valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the re-passage of this ordinance, in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

SECTION 6. Upon the completion of the construction of the said system of water works the said Samuel R. Bullock & Company their associates, successors and assigns shall notify the mayor and aldermen of the city of Vicksburg to that effect in writing and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw four (4) fire streams through one hundred feet of two and one half inch hose and one inch nozzle and from four (4) different hydrants a stream not less than fifty (50) feet high at the highest elevation on which any of such hydrants are located. On the satisfactory performance of this test the said board of mayor and aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

SECTION 7. Within fifteen — after the day that this ordinance takes effect the said Samuel R. Bullock and Company, their associates, successors and assigns shall file their written acceptance thereof, binding themselves to its terms and obligations, in the office of the city clerk accompanied by their bond in the penal sum of ten thousand ($10,000) dollars with two or more sufficient sureties to be approved by said board of mayor & aldermen executed to the mayor and aldermen of the city of Vicksburg and conditioned for the faithful compliance with the terms of this section. On failure to file such bond within said time this ordinance shall become null and void. But if said board shall not approve a bond so filed, said board may in its discretion grant additional reasonable time within which to file another bond.

The construction of the said system shall commence within sixty days after this ordinance takes effect, and said system shall be completed within eighteen (18) months after the commencement of the *construction* thereof *provided however* that the time during which the said Samuel R. Bullock & Company, their associates successors or assigns are delayed by floods, act of God or the public enemy, legal proceedings for the maintenance or defense of their legal rights or in the acquisition of property or right of way, or by reason of any other causes whatever beyond their control shall form no part of the time limited in this ordinance for the performance of any act required by the terms hereof to be done by them, but they shall use all due diligence to remove any such obstructions or delays.

SECTION 8. The said board of mayor and aldermen of the city of Vicksburg shall from time to time pass and enact ordinances under

suitable penalties providing for the protection of the said works from damage, fraud or imposition.

19 SECTION 9. At the expiration of each period of ten years after this ordinance takes effect, the mayor and aldermen of the city of Vicksburg shall have the right and privilege to purchase the said system of water works provided they notify the said Samuel R. Bullock & Company, their associates, successors or assigns, of their intention to do so, at least one year before the expiration of the said period of ten (10) years.

The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their associates, successors or assigns and the board of mayor & aldermen of the city of Vicksburg shall severally appoint one person, the two appointees shall choose a third and the three persons thus chosen, who, shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. None of the board shall be residents of the said Warren county. The said mayor and aldermen of the city of Vicksburg shall within sixty days after the said board *have* rendered its decision, pay the amount awarded in cash. A failure to so pay the award or to give notice of intention to purchase as above provided shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten (10) years.

SECTION 10. The said Samuel R. Bullock & Company, their associates, successors and assigns shall make extensions to their line of mains whenever called upon so to do by the mayor and aldermen of the city of Vicksburg. Provided, however, that said extensions shall not be less than 500 feet in length and that one public fire hydrant shall be located on each five hundred feet or major portion thereof, and *further provided* that two thirds of the residents in the line of such extension shall agree to take water at the established rates for a period of at least two years, but the said Samuel R. Bullock and Company, their associates, successors and assigns may voluntarily make such extensions from time to time as they may deem necessary.

SECTION 11. After the works are in operation, if at any time the pressure gauges located at the points hereinbefore named shall indicate a pressure of less than twenty (20) pounds on the distributing mains at the highest point of elevation for the period of two weeks in succession then the rental for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained, provided however, if the pressure indicated as aforesaid, shall be less than twenty pounds for two calendar months in succession then all the rights and privileges of the said Samuel R. Bullock & Company, their associates successors and assigns acquired by virtue of this ordinance shall at the option of said board of mayor and aldermen made in writing cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company, their associates, successors and assigns from temporarily shutting off the water from its said system

or any portion thereof for the purpose of making repairs or
20 extensions to the same; and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors or assigns for the suspension of the supply of water provided the repairs or extensions are made and the water turned on again without unnecessary delay. But the city shall not be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom.

SECTION 12. Be it further ordained, That as a part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Co., their associates, successors and assigns, the said water works and the property and business pertaining thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation, and all of the property and business pertaining to and employed in and about said system of water works, shall thereafter during each year of the balance of the period of this contract, be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars (50,000).

SECTION 13. The said Sam'l R. Bullock & Co., their associates, successors or assigns shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works and to make such rates and charges for the use of said water as they may determine, provided that said rates and charges shall not exceed fifty cents for each thousand gallons of water.

SECTION 14. Be it further ordained That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg which shall accrue to the said Sam'l R. Bullock & Company their associates successors or assigns by virtue of the terms and conditions of this ordinance, the mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually levy and cause to be collected upon the taxable property of said city a special tax, to be known and designated as the water works tax, sufficient to meet and pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations and liabilities shall be paid and discharged.

SECTION 15. Be it further ordained, That this ordinance shall take effect from and after its approval by the mayor.

Ordained this 18th day of November, 1886.
(Signed) H. J. TROWBRIDGE, *City Clerk.*

Approved this 19th day of November, 1886.
(Signed) JOHN W. POWELL, *Mayor.*

21 EXHIBIT "C."

Charter of Incorporation of the Vicksburg Water Supply Company.

Article I.

E. S. Butts, John B. Mattingly, L. W. Magruder, Clarence Delafield, and Chester R. McFarland, and such other persons as may hereafter become their associates and successors, are hereby created a body politic and corporate by virtue of chapter XXXVIII. of the Revised Code of 1880 of the State of Mississippi, and the acts of the legislature of said State, amending and supplementing the same, under the name and style of "The Vicksburg Water Supply Company."

Article II.

The domicil and principal place of business of this corporation shall be in the city of Vicksburg, in Warren county, Mississippi, but an additional branch business office may be established and maintained in the city of New York. Meetings of the board of directors may be held and this corporation may transact any of its business or affairs at either its principal place of business or at its branch business office as aforesaid.

Article III.

The purposes for which this corporation is created are to construct maintain and operate a system of works to supply the city of Vicksburg, in Warren county, Mississippi, and the vicinity and the inhabitants thereof with an adequate supply of pure and wholesome water for all public and private uses.

Article IV.

The powers to be exercised by this corporation are as follows: To have perpetual succession; to determine the manner of calling and conducting meetings; to determine the number of shares that shall entitle its members to vote and the mode of voting by proxy; to elect all necessary officers; to sue and be sued and prosecute and be prosecuted to judgment and satisfaction before any court of justice in the State; to have a corporate seal; to contract and be contracted with within the limits of its corporate powers; to make charges for supplying water and to collect payment therefor at such rates and upon such terms as may be agreed upon with the consumers; to make all necessary by-laws not inconsistent with the laws of Mississippi; to increase or diminish its capital from time to time to any amount by vote of its stock holders as hereinafter provided;
22 to hold and own personal property to any amount, and to sell, exchange and encumber the same; to borrow money and secure the payment of the same by a mortgage or deed of trust

upon its property revenues and franchises; to issue its bonds or other evidences of debt and secure the payment of the same by a mortgage or deed of trust upon its property, revenues and franchises; to sell, exchange, pledge or hypothecate such bonds or other evidences of debt.

This corporation shall also have the power of acquiring by purchase or otherwise an assignment to it of any contract which the city of Vicksburg may have heretofore entered into with any other person or persons to provide a supply of water to the city of Vicksburg and its inhabitants, and of succeeding to and exercising and enjoying all, and singular, the rights, powers, privileges, advantages, benefits, immunities, revenues and profits arising out of or accruing from, such contract, which said city, by ordinance or otherwise, may have conferred and granted to such person or persons; and to have such other rights, powers and privileges as are necessary and proper to carry into execution the purposes of its organization, and as may now or hereafter be conferred by the laws of the State of Mississippi.

Article V.

The capital stock of this corporation shall be two hundred and fifty thousand dollars, divided into five thousand shares of the par value of fifty dollars each, which shall be paid in such installments, and in such manner as the board of directors may determine: and the said capital stock or any part thereof, may be issued for money, or for property actually received by or labor or services actually rendered to this corporation on such terms as it may contract or deem necessary and proper for the transaction and conduct of the business and purposes for which it is incorporated; and when so issued, it is to be taken and deemed by all parties in interest as fully paid up at its par face value, and subject to no further calls or assessments whatever, and this corporation may issue and dispose of its bonds in like manner.

Each stock holder shall be entitled to a certificate under the seal of this corporation, and signed in its name by its president and counter-signed by its treasurer, specifying the number of shares to which he may be entitled, which shall be transferable as now provided by law.

Article VI.

The business and affairs of this corporation shall be conducted by a board of directors consisting of five persons, a majority of whom shall constitute a quorum. The first board shall be elected as hereinafter provided and thereafter said board shall be elected by the stock holders from among their own number at their annual meeting as hereafter provided. The said board is hereby vested with full power and authority to do all things necessary and requisite to carry into effect the purposes for which this corporation is
23 created. Within twenty days after its election, the said board shall meet in the city of Vicksburg, or in the city of New York, and elect one of their own number as president, and shall ap-

point or elect a treasurer and secretary who may be directors, and latter office may be held by one and the same person, and such other officers agents and employees as said board may deem expedient. The said officers and board of directors shall hold office for one year, and until their successors are elected and qualified, and enter upon the performance of their duties, which shall be such as are ordinarily exercised by such officers, and as may be from time to time prescribed by the by-laws or the board of directors.

The annual meeting of the stock holders shall be held at the city of Vicksburg, Mississippi, on the second Wednesday in the month of May, in each and every year, commencing with the year 1888, between the hours of nine o'clock a. m. and four o'clock p. m. in pursuance of such notice as may be required by the by-laws, and at such meeting the stock-holders shall elect the board of directors for the ensuing year and transact such other business as may be lawfully brought before it. At all stock-holders' meetings a majority of the votes of the stock holders present or by proxy shall govern, as herein otherwise provided.

In case of a failure to hold the annual meeting on the day herein prescribed, the same may be held on such subsequent day as the by-laws or board of directors shall appoint, and the said annual meeting may be adjourned from time to time, and any business may be transacted at such subsequent meeting as might have been transacted on the day fixed herein for the annual meeting.

The by-laws prescribe the time of holding and the mode of calling regular and special meetings of the board of directors.

Article VII.

The corporators herein named shall meet in pursuance of a written notice to that end, designating the time and place of meeting signed by any two of them and delivered to the other at least one day previous to such meeting, and when duly assembled, shall proceed to organize this corporation by the election of the first board of directors, and for that purpose any three of said corporators shall constitute a quorum.

Article VIII.

The stock holders of this corporation shall not be individually liable for any debts, loss, or damage or liability, contracted or incurred by said corporation. But each stock holder shall be liable for the amount of balance that may be due for stock subscribed for by him, according to the statute in such case provided.

Article IX.

This charter shall not be altered or amended except by the assent of a majority of the stock holders, of this corporation ex-
24 pressed at any annual meeting or at any meeting called in pursuance of a notice stating the purposes of the meeting, signed by the owners of at least two thirds of the capital stock, or by

the president and secretary of this corporation on the written request of at least one third of the capital stock, and published at least once in each week for two successive weeks immediately preceding the date fixed for said meeting, in any newspaper of general circulation published in the city of Vicksburg, Mississippi, and the said assent certified to by the president and secretary of this corporation shall accompany the application for the proposed alteration or amendment.

In case any alteration or amendment is made to this charter a notice thereof directed to the stock holders of this corporation generally and clearly disclosing the nature of the alteration or amendment so made, shall be published once in each week for four successive weeks immediately following the date of the meeting at which the same was made, and such alteration or amendment shall be binding on all the stock holders unless those dissenting shall, within thirty days after knowledge that the same has been made, enjoin this corporation from acting under such alterations or amendments and if any stock holder or member shall fail to do so, he shall be estopped to deny the validity or binding effect thereof.

In testimony whereof, witness our signatures this the 1st day of February, A. D. 1887.

J. B. MATTINGLY.
E. S. BUTTS.
L. W. MAGRUDER.
CLARENCE DELAFIELD.
CHESTER R. McFARLAND.

Approval of Attorney General.

There is nothing in the within charter of incorporation violative of the constitution or laws of this State.

T. M. MILLER,
Attorney General.

EXHIBIT "D."

Know all men by these presents, that, whereas the mayor and aldermen of the city of Vicksburg, State of Mississippi, did on the 18th day of November, 1886, pass and enact a certain ordinance entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, giving the said city of Vicksburg an option to purchase the said works," which ordinance was thereafter on the 19th day of November 1886, duly approved as required by law.

And whereas under and by virtue of section 5 of the aforesaid ordinance the grantees thereof were empowered to procure the
25 organization of a water works corporation with the right to assign to it all the rights and privileges acquired thereunder.

And whereas in pursuance of section 5 of the aforesaid ordinance the said grantees have procured the incorporation of the Vicksburg Water Supply Company under the laws of the State of Mississippi.

And whereas the terms and conditions of section 7 of the said ordinance as to acceptance of the said ordinance and filing of the penal bond as therein provided, have been duly complied with,

Now therefore know ye that for and in consideration of the sum of one dollar lawful money of the United States of America and other valuable considerations to us in hand paid by the Vicksburg Water Supply Company a corporation existing under and by virtue of the laws of Mississippi, the receipt of which is hereby duly acknowledged, we, said Samuel R. Bullock and William S. Mercer composing the firm of Samuel R. Bullock and Company, for ourselves, our personal representatives and assigns, have assigned, transferred and set over, and do by these presents, assign, transfer and set over unto the said Vicksburg Water Supply Company and its successors and assigns, all our right title and interest in and to the ordinance aforesaid, and all ordinances, resolutions and orders adopted subsequent to the aforesaid ordinance, and in any manner relating thereto, as fully and to all intents and purposes as if the said The Vicksburg Water Supply Company had been originally named as grantee therein.

In witness whereof, we have hereunto set our hands and seals this first day of March, 1887.

SAM'L R. BULLOCK.
WM. S. MERCER.

Signed and delivered in the presence of
JAS. A. RYERSON.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that on this 16th day of March, in the year one thousand eight hundred and eighty seven before me the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Mississippi to take acknowledgments of deeds, &c., to be used or recorded therein, personally appeared the within named, Samuel R. Bullock and William S. Mercer, who acknowledged that they signed, sealed and delivered the foregoing instrument on the day and year therein mentioned as their act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

(Signed) EDWIN F. COREY,
[SEAL.] *Commissioner of the State of Mississippi.*

Office 60 Wall St., N. Y.

26 EXHIBIT "E."

Know, all men, by these presents: That whereas the mayor & aldermen of the city of Vicksburg did on the 18th day of November, 1886 pass certain ordinance entitled, "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates successors, and assigns for a supply of water for the public use, and giving the said city of Vicksburg an option to purchase the said works

And whereas under and by virtue of section 5 of the said ordinance the grantees thereof were authorized to procure the organization of a water works corporation and to assign to it all the privileges acquired thereunder.

And whereas in pursuance of said authority the Vicksburg Water Supply Company has been incorporated under the laws of the State of Mississippi, and under and by virtue of a certain assignment bearing date March 1st, 1887, the said company has succeeded to all the rights and privileges acquired under the aforesaid ordinance by the same Samuel R. Bullock and Company.

And whereas it is provided by section 5 of the said ordinance that no assignments shall be valid unless the assignee shall accept the said ordinance in writing.

Now therefore be it known that the Vicksburg Water Supply Company for itself, its successors and assigns *have* accepted and by these presents accept- and agree- to become bound by the terms and obligations of the aforesaid ordinance.

In witness whereof the said company has caused this acceptance to be signed in its corporate name by its president and its corporate seal attached by its secretary to be hereto affixed this first day of March, 1887.

[SEAL.] (Signed) THE VICKSBURG WATER SUPPLY COMPANY,
By E. WOLTHAM, *President.*

Attest: CHARLES M. BERRIAM, *Secretary.*

I hereby certify that the above and foregoing is a true and correct copy of the original acceptance of the Vicksburg Water Supply Company as the same appears of record now on file in my office.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

27

Exhibit "F."

At an adjourned regular meeting of the board of mayor & aldermen of the city of Vicksburg, held on the 18th day of May, 1887, the following action was had, to-wit:

"The written acceptance of the Vicksburg Water Supply Company accepted and binding themselves to the terms and obligations of the contract as accepted by Samuel R. Bullock & Company, was read and ordered recorded."

I hereby certify the above to be true and correct.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

Exhibit "G."

Whereas on the 8th day of August, 1900 at the Real Estate Exchange #111 Broadway, New York City, State of New York, under and by virtue of a deed of trust executed by the Vicksburg Water Supply Company of Vicksburg, Mississippi, to the Farmers Loan & Trust Company, trustee, recorded in Book — on page — of the records of deeds of Warren county, Mississippi, securing the payment of two hundred & fifty thousand dollars of bonds and interest thereon, there was sold under said deed of trust all of the property, real and personal belonging to the Vicksburg Water Supply Company located in Vicksburg, in Warren county, Mississippi, as well as elsewhere, and more particularly described as follows to-wit:

All of its real and personal property, goods and chattels now owned or which may be hereafter acquired by it, including its land water works, buildings, pump houses, reservoirs, machinery, pipes, mains, hydrants, apparatus, and equipments, situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, rent, issues, income, and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the water company of, in and to the property above described or hereafter acquired, and each and every part or parcel thereof with appurtenances, together with one certain written contract existing between the Vicksburg Water Supply Company and the board

28 of mayor & aldermen of the city of Vicksburg, Mississippi, dated on the 18th day of November, 1886, and approved on the 19th day of November, 1886, for the rental of hydrants for the

use of the public for thirty years, which was assigned to the Vicksburg Water Supply Company by S. R. Bullock & Company, on the first day of March, 1887, and notice being duly given by the Vicksburg Water Supply Company to said board of mayor & aldermen on the first day of March, 1887, of Bullock & Company's assignment of said contract to the Vicksburg Water Supply Company and of the Vicksburg Water Supply Company's acceptance of contract; whereupon the board of mayor & aldermen of the city of Vicksburg, Mississippi, accepted and approved said assignment on the 18th day of May, 1887.

Now, therefore, at said sale as aforesaid, said Vicksburg Water Works Company of Vicksburg, Mississippi, purchased said property, contract, &c., as above described and set out.

Now therefore for the consideration of one dollar, cash in hand paid to the Vicksburg Water Supply Company, and for the further consideration of the benefit that the Vicksburg Water Supply Company have already derived through said contract and for the further purpose of showing good faith on our part to the purchaser thereof, the Vicksburg Water Supply Company, through its president, hereby conveys and quit-claims all of the right, title interest of every kind and nature whatsoever, it may have in and to the aforesaid property as above described, real and personal, or that it may now own, or may have owned or may hereafter acquire, including said contract with the board of mayor and aldermen aforesaid, situated in the city of Vicksburg, county of Warren, State of Mississippi, unto the Vicksburg Water Works Company of Vicksburg, Mississippi.

In witness whereof, the Vicksburg Water Supply Company has caused these presents to be signed in its respective corporate name by its respective president, and its corporate seal attested by respective secretary, to be hereto affixed on the 18th day of October 1900. Revenue stamps having been affixed to deed from Farmers Loan and Trust Company to Vicksburg Water Works Company, we deem it unnecessary to affix the same hereto.

(Signed) WHITNEY CONANT,

[SEAL.] *President of the Vicksburg Water Supply Company.*

W. G. SNOW, *Secretary.*

STATE OF NEW YORK, *New York City and County, ss:*

Personally appeared before me Charles Edgar Mills, a duly authorized commissioner of deeds for the State of Mississippi, in New York, residing in New York, city and State, the within named Whitney Conant, president of the Vicksburg Water Supply Company and W. G. Snow, secretary, who each acknowledged
29 that they had signed, sealed and delivered the foregoing deed on the day and year therein mentioned to be the free and voluntary act and deed of the Vicksburg Water Supply Company for the uses and purposes therein mentioned they being thereto duly authorized. That the corporate seal attached is the

corporate seal of said company and was duly affixed thereto by due authority.

Given under my hand and official seal this October 18th, 1900.

(Signed) CHARLES EDGAR MILLS,

[SEAL.] *Commissioner for the State of Mississippi in New York and Notary Public for New York County and State.*

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 10th day of December, 1900 at 9.10 o'clock a. m. and duly recorded in Deed Book 93 page 463 *et seq.*

Witness my hand and seal of said court this 10th day of December, 1900.

(Signed) J. D. LAUGHLIN, *Clerk,*

[SEAL.] By J. L. HYLAND, *D. C.*

EXHIBIT "H."

To the honorable board of mayor and aldermen of Vicksburg, Mississippi.

GENTLEMEN: On the 18th day of September, 1900, I, as secretary of the Vicksburg Water Works Company notified you that it was the assignee and owner of a certain written contract entered into between Samuel R. Bullock & Company of the one part, and the board of mayor and aldermen of the city of Vicksburg of another part, approved and accepted on the 19th day of November 1886 by both parties, whereby Bullock and Company their associates, successors and assigns for certain considerations therein mentioned are to supply the city with water for public and private use but I withdrew the notification until the board of directors of the Vicksburg Water Works Company could officially meet and accept said contract and authorize me to give you notice, and the same having been done by the Vicksburg Water Works Company by resolutions by said board of directors, now therefore, this instrument in pursuance of their action and request in this behalf, is to inform you that the Vicksburg Water Works Company of Vicksburg, Mississippi is the owner of said contract and has been, since about the fifteenth day of August, 1900, and in accordance with its minutes by resolutions adopted by its board of directors it thereby accepted said contract and said ordinance and became bound by its terms, conditions and obligations in every respect as the assignee and owner of said contract, and I as its secretary was instructed to give you said notice of its acceptance as above set out.

Witness its hand and seal of its secretary this 19th day of November, 1900, at Vicksburg, Mississippi.

(Signed) M. O. CRUMPLER.

I received a copy of said notice the 20th day of November, A. D. 1900.

(Signed) H. J. TROWBRIDGE,
City Clerk.

EXHIBIT "I."

At a regular meeting of the mayor and aldermen of the city of Vicksburg, Mississippi, held on the 7th day of November, 1900, amongst other proceedings had at said meeting, was the following to-wit:

Resolved, That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.

I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand and the seal of said city this 13th day of November, 1900.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk.

(Copy.)

EXHIBIT "J."

Resolved:—That the water works committee is instructed to notify the present owners of the Vicksburg Water Works Company, that the city of Vicksburg is authorized by law to purchase or build a water works system not to exceed in value $150,000 including all the expenses of engineering supervision etc., etc., and that said committee request the owners of said water works company to say whether or not they are willing to sell their plant, machinery and system complete to the city, and if yea, to name a price at which they will be willing to sell, and name a time within which the city shall have the option to purchase the same, giving the city authorities full time to investigate by competent engineers, the con-
31 dition of the system as to repairs, and affording them ample opportunity to ascertain its present value, the answer to be presented in writing at as early day as possible for the action of this body.

EXHIBIT "K."

To the honorable board of mayor and aldermen of the city of Vicksburg:

When your petitioner purchased the water works of this city, it knew that its dependent source of revenue and support must come

from its contracts with the city and citizens to supply the same with water as a protection against fire, private use, etc., and that it has been supplying said city and citizens with water for these purposes and faithfully in accordance with said contracts and with the understanding that the city would pay the contract price to petitioner as agreed but notwithstanding this contract and faithful delivery, the city through you, is now refusing to carry out and pay the contract price to the petitioner as agreed upon for water received and used by you, but offers a wholly *and* inadequate price for said water so received and used.

Your petitioner shows aside from the legal obligations under this contract, the unjust proposition in offering to pay what you call a reasonable price for services rendered, in this, the city through its citizens are now only obligated to pay your petitioner under contract price $7,600.00 annually, while the city or its citizens are saving about $35,000.00 annually on insurance alone, caused or brought about solely by the water used by you, thereby leaving a net gain after paying $7,600.00 of over $25,000.00 annually to the city or her citizens which are one and the same, aside from the further benefits received by you free of charge, such as public fountains, schools, hospitals etc.

Your petitioner further shows that we are anxious and willing to keep up this constant supply of water and maintain the pressure thereof, but, should you reduce the present price or refuse to pay at all, it will simply be impossible for your petitioner to keep up its enormous expenses and maintain itself, and supply water because you know and realize that it is impossible for any concern to continuously run its business at a loss. With the present price which you are now obligated under said contract to pay for said water, it is almost impossible for your petitioner to operate and live. The water company has and did offer to the water committee and the attorn*ies* for the city that the water company would give the city assurance in writing that the payment for water received and used by the city at the contract price, should not in any way prejudice the city's suit against the water company.

32 EXHIBIT "X."

This indenture made the first day of March in the year 1887 between the Vicksburg Water Supply Company, a corporation created by and organized under the laws of Mississippi at the city of Vicksburg, party of the first part and hereinafter designated "the water company" and the The Farmers Loan & Trust Company, a corporation created by and organized under the laws of the State of New York, party of the second part, hereinafter designated "the trustee." Witnesseth:

Whereas the water company was incorporated for the purpose of conducting, maintaining and operating a system of water to supply the city of Vicksburg, Mississippi, and its inhabitants with water, and whereas in order to effect its corporate purposes the water com-

pany has determined to issue $250,000. of its coupon bonds in form as follows, to secure the payment by mortgaging its property and franchises.

The Form of *Coupon.*

Number —. $1,000.00.

UNITED STATES OF AMERICA,
City of Vicksburg, State of Mississippi, County of Warren:

Vicksburg Water Supply Company (Vignette) First Mortgage Six Per Cent. (6%) Thirty (30) Year Gold Bond.

Know all men by these presents, that the Vicksburg Water Supply Company is indebted to and hereby promises to pay Samuel R. Bullock & Company or bearer one thousand ($1000) dollars of gold coin of the present weight and fineness lawful money of the United States of America at the office of the Farmers Loan & Trust Company in the city of New York on the first day of March in the year 1917, with interest thereon at the rate of six per cent. (6%) per annum payable at the same place in like gold coin on the first day of March and September in each and every year until the majority hereof—upon the presentation and surrender of the next coupons thereof as they respectively become due, free from all United States and municipal taxes levied or to be levied. This bond is one of the series of the two hundred and fifty (250) bonds of the like amount, tenure and date numbered from one (1) to two hundred and fifty (250) both inclusive. Amounting in the aggregate to two hundred and fifty thousand dollars ($250,000), and is secured by an issue subject to the provision of the first mortgage or deed of trust therein of even date herewith conveying to the said Farmers Loan & Trust Company in trust for the benefit of the holders of the said series of bonds and the property and franchises of the Vicksburg Water Supply Company now owned or hereafter to be acquired by it and
33 more particularly described therein. This bond shall not become valid until the certificate indorsed herein shall have been signed by the said trustee.

In witness whereof the Vicksburg Water Supply Company has caused these presents to be signed by its president, attested by its secretary and its corporate seal to be hereto affixed, the first day of March, A. D. 1887.

VICKSBURG WATER SUPPLY COMPANY,
By —— ——, *President.*

Attest: —— ——, *Secretary.*

$30.00. *Form of Coupon.* $30.00.

The Vicksburg Water Supply Company hereby promises to pay to the bearer at the office of the Farmers Loan & Trust Company in the city of New York on its surrender thereof, thirty dollars ($30.00)

in United States gold coin on the — day of —— 18— being six months' interest due on that day on its first mortgage six per cent. (6 %) thirty year (30) gold bond.

—— ——, *Treasurer.*

Form of Trustee's Certificate.

Trustee's Certificate.

It is hereby certified that this bond is one of the series described and referred to in the mortgage or deed of trust within mentioned.

THE FARMERS LOAN & TRUST COMPANY, *Trustee.*

—— ——, *Trustee,*

By —— ——, *Trustee.*

Now this indenture witnesseth that the water company to better secure the payment of the principal and interest of said bonds ratably and without discrimination or preference according to the true intent and meaning thereof and also for and in consideration of the sum of one ($1.) dollar in money of the United States of America to it in hand paid by the trustee a receipt of which is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the trustee and its successors forever all of its real and personal property, goods, chattels owned now or which may hereafter be acquired by it including its land, rents, water works, buildings pump-houses, stand pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipments
situated in the city of Vicksburg, county of Warren, State
34 of Mississippi, together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, rents, issues, income, profits accruing therefrom, also all and singular the corporate franchises, privileges, rights liabilities which the water company now has and can exercise or shall hereafter acquire and possess and also all the estate right, title, interest, property, possessions, claim and demand whatsoever as well in law as in equity of the water company, of and to the property above described or hereafter to be acquired, and each and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above granted and described premises with the appurtenances unto the trustee and its successors forever.

In trust nevertheless and to and for the uses and purposes hereinafter expressed of and concerning the same for the equal pro rata, benefit and security of all who may become the lawful owners and holders of any of the bonds and coupons intended to be secured hereby without any provisions of priority of any bond over another by the name of priority in the time of issue or negligence or otherwise. And in order to carry out the purposes of this trust it is covenanted and agreed;

1st. Until default shall be made in the payment of the interest of said bonds according to their tenure of the terms of this instrument or in the payment to be made in the "sinking fund" as hereafter provided and as long as the condition and agreements herein contained shall be faithfully preserved the water company shall retain possession of the above granted and described property, and use, enjoy and operate the same and the leases, issues, incomes and profits thereof to take, have and apply to and for its sole use and benefit but in such manner as will not impair the security hereby created.

2nd. Should any default be made in the payment of the principal or interest of the aforesaid bonds according to their terms or the terms of this instrument and should the same remain unpaid and in arrear for the space of six months then upon the written request of the holders of at least one-fourth of the aforesaid bonds then owing and outstanding so to do and in proper indemnification being made against the costs and expenses to be incurred, the trustee or its successors shall have the right by its agent, attorney or servants to enter into, upon and take possession of all and singular the property hereby conveyed or intended so to be, and to every part and portion thereof and have the use and operate the same and exercise the privileges pertaining thereto and make such repairs, replacements or improvements as it may in its discretion deem necessary for the proper preservation and operation of said mortgaged property and take collect and receive the earnings, income, liens, issues and profits of the same, and after deducting the expenses incident thereto, including a reasonable compensation to the trustee and all taxes, rents or assessments due thereupon to apply
35 the money so arising from said mortgaged property to the payment in full of the interest coupons in default of said bonds in the order that they may fall due and after paying such interest as shall be unpaid and in arrear to render the over-plus if any there be and surrender the mortgaged premises unto the water company or its successors to be managed by it as if such default had never taken place, provided however that if the trustee shall take possession in case of default in the payment of the principal of the aforesaid bonds according to their terms or to the terms of the instrument or if such default be made while the trustee is already in possession after the payment of the interest and other expenses as above provided as the same may from time to time become due and payable, the trustee shall apply the residue of said money to the payment and extinguishment of the principal of the aforesaid bonds ratably and without discrimination or provisions and shall continue in possession of and shall operate and manage the said mortgaged property until the said principal is fully paid and satisfied, and after paying said principal and interest and other expenses in full shall render the over-plus and surrender the mortgaged premises and property unto the water company or its successors, free of and released from the rent hereby created and provided further that in case of default of the payment of interest in the manner and period aforesaid, if the holders, or at least a majority, of the bonds then owing and outstanding shall notify the water company and the trustee or their

respective successors in writing before the interest so in default has been paid that they, the said bond holders, elect that the principal of all of the bonds secured hereby, and then owing and outstanding become and be due and payable, then upon such election being made and notice being given as aforesaid the principal of all of said bonds shall immediately become and be due and payable although the period therein limited for the payment thereof shall not then have expired.

3rd. If default shall be made in the payment of the principal or interest of the aforesaid bonds, according to their terms or the terms of this instrument and should the same remain unpaid and in arrear for the space of six months, then it shall be lawful for the trustee or its successors on being indemnified as aforesaid and upon a written request of the holders of a majority of the said bonds then owing and out-standing. So to do after entry as aforesaid or other entry or without entry to use or dispose of all the property and franchises of every kind and description hereby conveyed and of benefit and equity of redemption of the water company and its successors and assigns and of persons claiming under them in and to the same on publication to the highest bidder after a notice thereof be published in one or more newspapers of general circulation printed in the city of Vicksburg, State of Mississippi and the city of New York, once each week for twelve successive weeks and on the day of sale and by such form and other notices or requirements as may be necessary
under the laws of the State of Mississippi. The sale to be held
36 in the city of Vicksburg or in the city of New York, with the
power to the trustee to adjourn the same from time to time at its discretion by advertisement or announcement of the time and place of the proposed sale, and the attorney for the water company or its successor for that purpose by these presents authorizes, constitutes and appoints, to make execute and deliver to the purchaser or purchasers thereof a good and sufficient deed in fee simple or at the discretion of the trustee aforesaid, to foreclose and sell the equity of redemption to the water company or to other persons having a legal or equitable right or claims against or in or to the mortgaged premises, or any portion thereof by proceeding in law or equity or in any court, or tribunal of competent jurisdiction which sale so to be made in either of the modes herein described shall forever be a perpetual bar both in law and equity against the water company, its successors or assigns, and against all other persons claiming or to claim the said property or any part thereof, by from or under them or any of them, the water company hereby expressly waives the benefit and advantage of any and all valuation, *stayed* appraisement, or exemption laws, and all laws requiring a mortgage or other securities for money to be foreclosed for action therefor now in force and which may hereafter be in force under the laws of Mississippi.

4th. In case of a sale of the property hereinbefore mentioned in either of the modes hereinbefore described the trustee shall apply the proceeds hereof after deducting the cost and expenses of said sale to the payment in full ratably and without discrimination for preference in case there is a deficiency of the principal of all of

said bonds, then due and outstanding and the interest due thereon up to the time of such application rating the over plus if any there be unto the water company its successors or assigns.

5th. In the event of the sale under the terms of this mortgage it shall be lawful for any bond holder or bond holders or for the trustee on behalf of such of them as may unite in authorizing it so to do to purchase the property and franchises hereby conveyed and the bonds and coupons held by the purchaser, the bond holders shall receive in payment of the purchase money so obtained at said sale by them or by the trustee on their, behalf, the said sum paid in cash, equivalent to the amount which the purchase bond holders shall be entitled to out of the proceeds of such sale after deducting all legitimate cost and expenses provided however that the purchasing bond holders so request the trustee to purchase the said mortgage property on their behalf shall contribute in cash their portion of the expense of said sale or in case of a purchase by the trustee of this section the property and franchises shall be held by it in trust for the benefit of such bondholders only as may have authorized it to purchase on their behalf and free *for* the lien of these presents.

6th. If the water company shall well and truly pay or cause to be paid the principal and interest of the said bonds when the same shall become due and payable according to the tenure of said
37 bonds and coupons thereto attached and shall comply with all other requirements hereof according to the true intent and meaning of these presents then and in that event all of the estate, right, title, and interest of the trustee and its successors, in the trust hereby created shall cease, determine and be null and void, otherwise the same shall be and remain in full force and virtue.

7th. If at any time the trustee or its successors shall enter into and take possession of said property or the trustee *to* sell the same by reason of any default in the payment of any principal or interest or anything required to be done by the water company as herein provided the water company shall have the right at any time prior to the actual sale of said property to pay and satisfy in full the principal of said bonds and the interest thereon to the date of payment together with all just and proper cost, charges and expenses paid or incurred by the trustee and a reasonable compensation for its services and upon such payment and satisfaction the trustee shall surrender to the water company all of said property hereby granted and shall execute and deliver to the water company such instrument as the water company may deem necessary and discharge these presents and records and *to* revest in it the title to said property and franchises.

8th. The water company and its successors and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in and to the hereinbefore granted property put there under or in trust for them shall and will at any time and times hereafter upon reasonable request of the trustee or its successors *buy* — at the proper cost and charges in the law, of the water company its successors or assigns, make, do and execute, or cause or procure to be made, done or executed all and every such

further and other lawful and reasonable, conveyance and assurance in the law for the better and more effectual vesting and confirming the property and franchises hereby granted or intended so to be and especially such property and franchises as shall be hereafter acquired in and to the trustee or its successors forever in trust as aforesaid as by the trustee or its successors, or their *concern*, learned in the law shall be reasonable devised, advised or required.

9th. Should the trustee herein named resign, for any reason whatever become incapacitated from acting under these terms it shall be lawful for the holders of the majority of the bonds then owing and outstanding, intended to be secured hereby to nominate by an instrument in writing executed under their hands and seals acknowledged in like manner, and the dee to be recorded in the State of Mississippi, such persons or corpora to act in the premises instead of such out going trustee as they sh.. deem fit and upon a written acceptance of such persons or corporation so nominated and appointed to be made and executed in like manner and deliver- to the water company he or it shall become vested with the same estate, rights, powers and liabilities as if he or it had been expressly
38 named as the trustee herein and thereupon all of the estate, right, title and interest of the outgoing trustee shall be divested, ceased and determine and be null and void.

10th. In any case herein provided which the trustee shall have the right to enter upon the said mortgaged premises or to do any other act to enforce any provision hereof the holder or holders of the majority of the out-standing bonds may by written instrument signfrom time to time, instruct and require the trustee to waive, discontinue and refer the exercise of such right, absolutely or upon such terms as such majority may deem proper or *as* such majority may reverse or annul, the power of the trustee already exercised but the exercise of the aforesaid power of the trustee or the majority of the bond holders in case of one default shall in no wise affect their respective right in case of a subsequent default.

11th. The trustee accepts the trust hereby created and its duties upon the following terms which are expressly agreed to the *the* recitals herein contained and made on behalf of the water company and not of the trustee.

The trustee shall be responsible only for its willful negligence or default and not for the act or default of any agent, attorney, or employee selected with reasonable discretion.

The trustee shall resign upon a notice to the water company of sixty days or upon shorter notice as the water company may accept as sufficient. The trustee shall not be bound to take any action toward the enforcement of any provision of this mortgage nor to appear in or defend any suit or proceeding brought against it as such trustee unless previously indemnified to its reasonable satisfaction against all cost, claim, suits or liabilities incident to or which may result from such action or default nor to recognize any person as the holder of any of said bonds nor to take any action at his request even if indemnified as above provided, unless his bonds are submitted to

the trustee for inspection and his ownership to the said bonds satisfactorily proved if disputed.

The trustee shall not be bound to record or file this mortgage or take any steps to make it a lien upon personal property or to renew or perpetuate, nor to insure the mortgage-property.

The trustee shall have reasonable compensation for its services and be reimbursed for all of its proper expenses in executing the trust hereby created and such compensation and expenses shall be *at* first *charged* upon the trustee's estate and fees.

12th. The holder or holders of any of the said bonds or coupons secured hereby shall not have the right to institute suit or proceedings to enforce any provisions herein contained unless the trustee shall refuse or neglect to institute the same after a written request from any bond holder or bond holders and at a reasonable opportunity so to do and the tender or receipt of a reasonable indemnity against the cost and expenses of said suit, or proceeding, by such written request and tender or receipt of a reasonable indem-
39 nity shall be a condition precedent to the commencement of any suit or proceeding by any bond holders.

In witness whereof the Vicksburg Water Supply Company and the Farmers Loan & Trust Company, have caused these presents to be signed in their respective corporate names by their respective presidents and their corporate seals attested by their respective secretaries, to be hereto affixed the day and year first above written.

VICKSBURG WATER SUPPLY COMPANY,
By E. WALTMAN, *President.*

Attest:
CHARLES M. BERREAN, *Secretary.*
[SEAL.]

FARMERS LOAN & TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest:
WILLIAM H. LEUPP, *Secretary.*
[SEAL.]

STATE OF NEW YORK, *City and County of New York:*

Be it remembered that on the third day of March, in the year 1887, before me the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and *in* the laws of the State of Mississippi, to take acknowledgments of deeds etc., to be used and recorded therein, personally appeared E. Waltman, president, and Charles M. Berrean, secretary of the within named Vicksburg Water Supply Company who severally acknowledged that they signed the within and foregoing instrument as such president and secretary, sealed the same with the corporate seal of said company and delivered the same as the act and deed of said company on the day and year therein mentioned. And E. Waltman of the said company being by me duly sworn did depose and say that he resides in the city of New York, *with* the seal affixed to the seal of the foregoing

instrument *as* the corporate seal of the Vicksburg Water Supply Company and was thereto affixed by the authority of said company and that he as president together with Charles M. Berrean, as secretary subscribed their names thereto by like authority.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

E. F. COREY,
Commissioner for the State of Mississippi.

Office 60 Wall St., N. Y.

40 STATE OF NEW YORK, *City and County of New York:*

Be it remembered that on this the fifth day of March in the year 1887, before me the undersigned Edwin F. Corey, a commissioner duly commissioned and qualified by the executive authority and under the laws of the State of Mississippi to take acknowledgments of deeds etc., to be used and *are* recorded therein, personally appeared Roswell G. Robertson, president and William H. Leupp, secretary, of the within named Farmers Loan & Trust Company, who severally acknowledged that they signed the within named and foregoing instrument as such president and secretary sealed the same with the corporate seal of said company and delivered the same as the act and deed of said company on the day and year therein mentioned, and the said Roswell G. Robertson of the said Farmers Loan and Trust Company being by me duly sworn did depose and say that he resides in the city of New York that the seal affixed to the foregoing instrument is the corporate seal of the said Farmers Loan & Trust Company and was thereto affixed by the authority of said company and that he as president with William H. Leupp, as secretary, subscribed their names thereto by like authority.

In witness *t*hereof I have hereto set my hand and affixed my official seal, the day and year last aforesaid written.

EDWIN F. COREY,
[SEAL.] *Commissioner for the State of Mississippi.*

Office 60 Wall St. N. Y.

STATE OF MISSISSIPPI, *County of Warren:*

I George T. Hardy, clerk of the chancery court of said county hereby certifies that the foregoing instrument was filed in my office on the 10th day of March, 1887, at 12.45 o'clock p. m. and duly recorded in Deed Book Number 63 pages 48 to 57, inclusive.

Witness my hand and seal of court this 11th day of March, 1887.

[SEAL.] GEORGE T. HARDY, *Clerk.*

EXHIBIT "Y."

STATE OF MISSISSIPPI, *County of Warren:*

In the Chancery Court.

To the Honorable W. C. Martin, chancellor:

The Mayor & Aldermen of the City of Vicksburg a municipal corporation under the laws of the State complainants exhibit
41 this their bill of complaint against The Vicksburg Water Supply Company and The Vicksburg Water Works Company, corporations under the laws of the State of Mississippi and domiciled in the said city of Vicksburg defendants and respectfully shows:

That on the 18th day of November, 1886 the said complainants in their said official capacity adopted an ordinance whereby a contract was entered into with certain persons doing business under the firm name and style and designated as Samuel R. Bullock & Company their associates, successors and assigns for a supply of water for public use:

That a copy of said ordinance is hereto annexed as Exhibit "A" and made a part of this bill.

It is provided in section (1) that in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for a period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains, and other conduits and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good, wholesome water to the city of Vicksburg, Miss., and its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force: and further said section makes provision that the said Samuel R. Bullock & Company should exercise proper care and diligence in and about the construction of said works.

That by section 2 the general plan of said system of water works is defined including specifications as to mains, hydrants, gates and valves, pumps, boilers, stand-pipe, pump-house and also as to the source of the supply of water.

It is specially provided under the head of pumps that the pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of

twenty-four (24) hours, against the pressure needed to supply all parts of the pipe system with an abundant supply of water.

They shall be so arranged as to be operated separately or together.

By said section the source of supply and character of water was specially designated in words as follows:—The water shall be taken from such point as may be free from all sewerage contamination, and shall be good wholesome water, for all purposes of domestic and manufacturing consumption.

By section three provision was made for compensation to the said Samuel R. Bullock & Company as follows:—In consideration
42 of the public benefit and the protection to property resulting from the construction of said system of water works, the mayor & aldermen of the city of Vicksburg hereby rent of the said Samuel R. Bullock & Company, their associates successors and assigns, not less than eighty (80) double nozzle, frost proof, fire hydrants for the aforesaid period of thirty (30) years, at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth day of January and July. After the first year of the operation of said water works, the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred hydrants shall be located on the original twelve (12) miles of mains, at said annual rental of sixty-five dollars, payable as aforesaid, and for the remainder of said period of thirty years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of one hundred (100) hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg shall be at the annual rate of fifty dollars (50) for each hydrant, payable as aforesaid during the unexpired period of the original term of thirty (30) years * * *

By section — it is provided that the said Samuel R. Bullock & Company should supply and provide with water free of charge six drinking fountains with openings for man and beast at such places as the board of mayor and aldermen of said city might designate.

By section — it is provided as follows:—The said Samuel R. Bullock & Company, their associates, successors and assigns, may procure the organization of a water works corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder, provided, that such assignment shall not invalidate or affect the bond required by section seven (7) hereof, and no assignment hereof shall be valid, unless such assignee shall, in writing to the said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the repassage of this ordinance in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

By section eleven it is provided that a pressure of not less than twenty pounds on distributing mains shall be maintained at the highest point of elevation; and it is further provided if the pressure should be less than twenty pounds in two calendar months in succession then all of the rights and privileges of the said Samuel R. Bullock their associates, successors and assigns acquired by virtue of this ordinance shall at the option of the board of mayor & aldermen made in writing cease and determine * * *

It is provided in section twelve for a part of a consideration
43 of the contract that the property and business of said water works shall be exempt from municipal taxation for the first five years of their operation and thereafter during the period of said contract all of said property and the business shall be assessed for taxation for said city at a valuation not to exceed fifty thousand dollars.

That by section fourteen of said act it is provided that for the purpose of paying the obligations of the said mayor & aldermen accruing to the said Samuel R. Bullock and Company, their associates, successors and assigns under said contract the said mayor and aldermen shall annually levy and cause to be collected upon all the taxable property of said city a special tax to be known as the water works tax sufficient to pay said obligations during the continuance of the contract and until all of said obligations shall be paid and discharged.

Complainants further show that in pursuance of said contract the said Samuel R. Bullock and Company proceeded to construct and erect a system of water works in said city and that afterwards to-wit; on the — day of —— the said works were accepted by the said mayor and aldermen:

That thereafter the said Samuel R. Bullock & Company procured the organization of The Vicksburg Water Supply Company one of the said defendants, as a corporation under the laws of the State of Mississippi and by virtue of said section five assigned to said corporation said contract and afterwards on the — day of —— the said Vicksburg Water Supply Co. in writing accepted said ordinance and thereupon the said board of mayor and aldermen formally approved said assignment.

That the said Vicksburg Water Supply Company operated and owned said works from said date to the 15th day of August, 1900, and was actually paid the compensation fixed by said contract for the use of its hydrants aggregating the sum of about eight thousand dollars ($8000) per annum.

That on the first day of March 1887 the said Vicksburg Water Supply Company for the purpose of securing two hundred and fifty thousand dollars (250,000) of bonds executed a deed of trust upon all its property situated in the county of Warren and State of Mississippi, and described in said deed of trust as follows:—all its real and personal property goods and chattels now owned or which may hereafter be acquired by it including its land, water works, buildings, pump house, stand pipe, reservoirs, machinery, pipes, mains,

hydrants, apparatus and equipment situated in the county of Warren, State of Mississippi, together with all and singular the tenements (hereditaments) thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, tolls, rents issues income and profits accruing therefrom also all and singular the corporate franchises, privileges, rights and liberties which the water company now hath and can exercise or shall hereafter exercise or shall hereafter acquire and possess and also all
44 the estate right title, interest property possession claim demand whatsoever as well in law as in equity of the water company of, in and to the property above described and each and every part and parcel thereof with the appurtenances.

That sometime in March, 1900 the said First national bank sold all of said mortgage bonds to certain persons to-wit: M. O. Crumpler and others in consideration of twenty-five thousand ($25,000) cash and the further sum of one hundred and twenty-five thousand dollars (125,000) in certain mortgage bonds to be thereafter issued upon the said property.

That it was also agreed between said parties that the deed of trust above mentioned should be foreclosed in accordance with its terms default having been made by said company as to its obligations under said deed of trust.

That a sale of said property was afterwards made on the 15th day of August 1900 in the city of New York by the trustees under said deed of trust at which the property above described was sold to the said M. O. Crumpler and others which said property was afterwards by said Crumpler and others conveyed to the defendant the said Vicksburg Water Works Company.

Complainants further show that the contract entered into with Samuel R. Bullock & Company on the 18th day of November 1886, is null and void and the attempt by said mayor & andermen to make such contract was a gross abuse of their rights and powers.

That the said mayor and aldermen had no right to make a contract for so long a time as thirty years and beyond the life of their official terms to bind constituted authorities of said city to pay rents for the said hydrants as therein stipulated:

That whatever may have been at the time a reasonable and just compensation to be paid to said water company for said hydrants such payment is now an excessive and unjust charge and an extortionate burden upon the tax-payers of said city.

Complainants show that the cost to construct a system of works like that at present operated at Vicksburg and owned by said defendant's water works company can be built, in every respect as good, for a sum not exceeding one hundred and thirty thousand dollars ($130,000). The present income of said water works including their claim against the city for annual rentals of said hydrants amounts in the aggregate to thirty thousand dollars ($30,000) per annum and that the expenses of every kind including improvements and betterments would not exceed an annual outlay of fifteen thousand dollars ($15,000) which would be a net return of ten per cent.

upon an investment of one hundred and fifty thousand dollars ($150,000) and that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal and said board exceeds its power and authority in making a contract stipulating for the period aforesaid said rates.

Complainants further show that in the 25th section of the
45 charter of the city of Vicksburg which was in force at the time of making said contract it is provided that the said mayor and aldermen shall not make any contract involving an expenditure of corporation funds, relating to work on public streets, or the erection, extension or repair of public buildings, where the cost of the proposed work shall exceed five hundred dollars, or for material to be furnished exceeding two hundred dollars in value, except upon advertisement duly made for sealed proposals to do such work.

Nevertheless said mayor and aldermen entered into said contract whereby said terms were imposed upon said city for the period without any advertisement for sealed proposals as provided by law by reason whereof said contract was unauthorized and is illegal and void.

Complainants further show that the said mayor and aldermen had no right to make provisions as was attempted to be done by the 14th section of said contract to make an annual levy of a special tax to be known as the water works tax to pay the obligation of said city accruing under said contract.

Complainants further show that by the terms of the first section the said mayor and aldermen attempted to grant and did grant unto the said Samuel R. Bullock & Company the exclusive right and privilege for the period of thirty years of erecting maintaining and operating a system of water works within the corporate limits of the city of Vicksburg and for the exclusive use of the streets, alleys, public squares of said city for that purpose, for the purpose of supplying water to the city of Vicksburg and its inhabitants for public and private use.

That the said mayor and aldermen had no right or power to make such contract; that an exclusive grant or monopoly of the kind is in contravention of the public policy of the State and is illegal and void.

That it is provided by section two of said contract that the pumping plant should consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four hours.

Complainants aver and charge the fact to be that neither the Vicksburg Water Supply Company nor the Vicksburg Water Works Company have ever complied with the provisions of this section.

That in constructing said works originally the pumps were connected with the Mississippi river for a water supply but that the contrivance for that connection afterwards failed and the pumping of the water since 1889 from the supply has been made by pumps of

inferior and unequal capacity to do the work required by said contract.

That said inferior pumps are used to take the water from the Mississippi river and to fill up a basin from which it is again pumped into the mains, by reason whereof said mayor and aldermen are entitled to have said contract annulled.

Complainants further show that the Vicksburg Water Sup-
46 ply Company and the Vicksburg Water Works Company have failed to provide for public and private use good and wholesome water.

That particularly since the 15th day of August, 1900 said Vicksburg Water Works Company have continuously from day to day and are now furnishing water which is not good or wholesome: that the water which has been provided from day to day by said company is wholly unfit for use and deleterious to health and that it is not even fit for ordinary bathing purposes.

That notwithstanding public and other complaints to the contrary said company has persistently, negligently, wilfully and unlawfully disregarded its obligations to said city in this regard, by reason whereof the said mayor and aldermen now claim the right to have said contract annulled.

That the purpose for which said works were constructed and organized was to provide not only the said city with fire protection but also its citizens with a supply of good and wholesome water for domestic use:

That such object and purpose has wholly failed by reason of the negligence and disregard of its duties by said water works company in that regard.

Complainants further show and charge that the action of the said mayor and aldermen which undertook according to the provisions of section 12 of said contract to exempt the property and business of said water works from municipal taxation for five years and afterwards provide that the assessment of the said property should not exceed the sum of fifty thousand dollars ($50,000) was an abuse of the powers of said mayor and aldermen, whereby an unjust burden was imposed upon the tax payers of said city.

That said board had no right to make any exemption from taxation of said property and had no right to provide by contract for said assessment at fifty thousand dollars ($50,000) and the action of said board in this regard is illegal and void and said contract is in consequence a nullity.

Complainants further charge that the Vicksburg Water Works Company have negligently failed and refused to comply with the obligations imposed upon it by section eleven of said contract, wherein there is required a pressure of not less than twenty pounds shall be maintained upon the distributing mains at the point of their highest elevations.

That by said section it is further provided that if the pressure shall be less than twenty pounds for two calendar months in succession then all the rights conferred by said contract shall at the op-

tion of said mayor and aldermen made in writing cease and determine.

Complainants charge that the said Vicksburg Water Works Company have negligently failed for more than two calendar months to maintain said pressure at said elevation and the board of mayor and aldermen do now exercise their option and do now declare
47 that the rights and privileges conferred by said contract shall cease and determine.

Complainants further show that the said board of mayor and aldermen at a meeting held on the 5th day of Nov. *it was* resolved and declared that the said board no longer recognized any liability under said contract to said company, by reason whereof said complainants say that said contract no longer exists.

Complainants further show that by the terms of section seven a bond was required to be executed by the said Samuel R. Bullock and Company for the faithful performance of the conditions of said contract and by section five the right was given to the said Samuel R. Bullock & Company to procure the organization of a water works company, authorizing assignment to it of all rights acquired under said contract: It was further provided that no assignment of the contract should be valid unless in writing, the assignee should accept the ordinance:

That by the terms of these sections it was contemplated that there should be no assignment of said contract except to a company organized by Samuel R. Bullock and Company and made in pursuance of said provisions:

Complainants now show that the said Vicksburg Water Works Company have never acquired by assignment or otherwise said contract or any rights thereunder:

Complainants show that the matters hereinbefore set forth in respect of the sale to M. O. Crumpler and others of the mortgage bonds issued by the Vicksburg Water Supply Company and a foreclosure under the deed of trust securing the same are now made upon information and belief.

The mayor of this city on or about the — day of October 1900 addressed a formal communication to the Vicksburg Water Works Company requesting that it should *it should* inform the constituted authorities of said city of the muniments of its title and the right by which it claims to be assignee of said contract. A copy of said letter is hereto annexed marked Exhibit "B" and made a part of this bill.

The said water works company have refused and still refuse to give to the said mayor and aldermen of said city any information in the premises.

That they have not been informed and do not know anything concerning the alleged rights of the said Vicksburg Water Works Company in the premises further than its own declaration that it claims to own the water works plant situated in this city and claims the right to assert the rights and privileges granted to Samuel R. Bullock & Company under said contract:

Complainants now deny that the said Vicksburg Water Works

Company or the said M. O. Crumpler or any one else have ever acquired any right whatever accruing under said contract:

Complainants further show that the Vicksburg Water Supply Company is a defunct organization and is entirely without
48 assets or business and has ceased to be a going concern: they are informed that all of its property and other assets were on the 15th day of August 1900 sold under said deed of trust:

That since the 15th day of August, 1900, it has not complied with any of the terms of said contract:

That it had no means or agencies whereby to carry out the obligations assumed by it under said contract:

That by the terms and spirit of said contract its obligation was a continuous one from day to day to provide said city and its inhabitants with water in a sufficient supply for their needs:

That as between said Vicksburg Water Supply Company and the city of Vicksburg said contract has become and is void and a nullity:

That when it permitted itself to become permanently disabled from performing the obligations of said contract and when it became utterly insolvent and bankrupt without any means or assets or without any organization as a corporation, said contract thereupon and thereby became dissolved and became a nullity:

That one, Chester R. McFarland who was formerly superintendent of the Vicksburg Water Supply Company has been nominally continued in said office to the 1st day of January 1901.

Wherefore complainants say that they are entitled as against the Vicksburg Water Supply Company to have said contract declared as having been dissolved and as being without force and effect.

Complainants further show that said mayor and aldermen were authorized and empowered by virtue of an act of the legislature approved on the — day of February 1900 to construct or cause to be constructed a system of sewerage in the city of Vicksburg at a cost not to exceed the sum of one hundred and fifty thousand dollars ($150,000).

That the health and the welfare of the inhabitants of said city demand that a system of sewerage should be constructed: that the growth and extent of its population are such as imperatively require as a condition precedent to the construction of said sewerage that said mayor and aldermen should first acquire and own a system of water works either by purchase or construction: It was manifestly contemplated by said law and by the constituted authorities of said city that said water works then owned by the said water works company might be acquired upon reasonable terms of compensation, nevertheless under the alleged contract the said water works company claims the right to demand from the city the sum of eight thousand dollars a year during the unexpired term of said contract, to-wit until the 19th day of November, 1816:

That since the passage of said act the said Vicksburg Water Works Company have acquired possession of said plant and are now asserting that they have succeeded to the rights of the contract made with Samuel R. Bullock & Company as aforesaid.

That under the circumstances no reasonable terms can be
49 made between the said Vicksburg Water Works Company and said city for the purchase of said works:

That if said works were new they would not cost above the sum of one hundred and thirty thousand dollars ($130,000):

That the present plant is now about fourteen years old and has depreciated in value and efficiency accordingly:

That the present method by which water is taken from the Mississippi river and the present character of the water are such that they could not be tolerated, by the said mayor and aldermen, in case it should acquire a system of its own:

That any system which would be acquired by said city and operated for the benefit of its people would be a gross imposition upon its inhabitants and a gross dereliction of the official duties of said board if it did not provide for a supply of good and wholesome water:

That it would cost the sum of not less than fifty thousand dollars to change and improve the present water works plant in such a way as to make said plant efficient and satisfactory:

That the said Vicksburg Water Works Company will not yield its contention that it possesses a subsisting contract with said city whereby it is entitled to claim an annual payment of eight thousand dollars ($8,000) for the next sixteen years.

That in fact this pretended claim constitutes the most valuable of the alleged assets of said company: That without it said plant and all of its property and business would not be worth the sum of one hundred thousand dollars ($100,000):

Complainants further show that the imperative duty imposed upon said mayor and aldermen by said law to make provisions for said sewerage plant, and to that end to acquire a system of water works is embarrassed and obstructed by the pretended claim of said Vicksburg Water Works Company as aforesaid.

That the said mayor and aldermen would not be warranted in exercising its rights to build a new system if it be true that they are bound to said water works company by contract requiring a payment for the rental of the present works at eight thousand dollars per year for the next sixteen years:

That it would be a dereliction of public duty on the part of the mayor and aldermen and a gross disregard of their obligations to admit the contention of the said water works company that they are bound to it by the terms of said contract as a basis for the purchase of said plant.

That the said defendant, the said Vicksburg Water Works Company have unjustly and illegally embarrassed and obstructed the said mayor and aldermen in and about their duties as aforesaid and continue to persist and so obstruct them by said pretended and alleged claim.

Complainants aver that it is the duty of said mayor and aldermen to cause to be promptly determined the question of their
50 liability under said contract to the said Vicksburg Water Works Company:

That they owe it to the citizens and tax payers of said city to secure for them such public utilities as a water works plant and a sewerage system upon the most economical and best terms.

That they should be free to act for the best interest of said city in the premises and rid of their alleged liability to said company.

That they are entitled to have ascertained and determined whether or not the said city is legally bound by said contract: that if it shall be determined that they are so bound, they should be free to exercise their discretion, and await the convening of the next legislature for authority to build said sewerage system, without the condition precedent that they should own the water works plant:

That the public interest and the public welfare require that there should be speedily determined the question of their said liability, if any, under said contract.

They are advised and charge the fact to be by reason of the facts hereinbefore averred that they are entitled as against the Vicksburg Water Supply Co., to have said contract cancelled and annulled and as against said Vicksburg Water Works Company to have a decree that said company have never acquired any rights in or to said contract or if mistaken in this by reason of the matters and things stated they are entitled to have the same annulled and cancelled. To the end that the said complainants may have the said relief as may appear just and proper: They pray that the said Vicksburg Water Supply Company, Chester R. McFarland, superintendent of the same, the Vicksburg Water Works Company and M. O. Crumpler, superintendent of same, be made parties defendant hereto and that they be subpœnaed to appear and make answer to this complaint and to abide and perform the decrees of this court:

That said Vicksburg Water Works Company and M. O. Crumpler in said answer be required true answers to make to the following interrogatories:

Int. 1. When and how did you or either of you become the owners of the water works plant formerly owned by the Vicksburg Water Supply Company?

Int. 2. Please append to your answers copies of all contracts and deeds whereon you base your claim and title to said works and your claim to the right and privileges conferred on Samuel R. Bullock & Company their assigns and successors under an ordinance of said city approved November 19th, 1886.

Complainants will ever pray etc.,

(Signed) VOLLER & MOUNGER,
Sol's for Compl'ts.
MAGRUDER & BRYSON,
Sol's for Compl'ts.

51 STATE OF MISSISSIPPI, *County of Warren:*

Personally appeared before the undersigned a justice of the peace in and for said county the within named W. L. Trowbridge, mayor of the city of Vicksburg, who being by me duly sworn says that the

matters and things in the foregoing bill contained are true to the best of his knowledge and belief.

W. L. TROWBRIDGE,
Mayor City of Vicksburg.

This the 7th day of December, 1900.

JOHN W. POWELL,
[SEAL.] *Justice of the Peace.*

The foregoing has the following indorsement, to-wit: No. 41. Vicksburg Water Works Company *vs.* Mayor and Aldermen of Vicksburg.—Bill of complaint.—Filed Feb'y 16th, 1901, L. B. Moseley, clerk, C. D. Banks, D. C. No. 1. S. S. Hudson, attorney at law, Vicksburg, Miss.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc-:

The President of the United States to the marshal of the southern district of Mississippi, Greeting:

You are hereby commanded, without delay, to summon the Mayor & Aldermen of the City of Vicksburg citizen- of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Vicksburg, at rules, to be holden in the clerk's office of said court, on the first Monday in July next, to answer a bill in equity exhibited against them by the Vicksburg Water Works Company citizens of the State of Mississippi and unless they shall enter their appearance therein; in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 16th day of Feb'y A. D., 1901.

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

The defendant-, The Mayor & Aldermen of the City of Vicksburg *is* hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before the first Monday of July 1901, otherwise the bill may be taken *pro confesso.*

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

52 *Marshal's Return.*

The foregoing has the following return made by the U. S. marshal, as follows, to wit:

Rec'd at Biloxi, Miss., Feb'y 19, 1901, and executed in the city of Vicksburg, Miss., by handing to —— Trowbridge, mayor of the city

of Vicksburg, Miss., a true copy of this summons at the hour of 4.40 p. m. this Feb'y 21st, 1901.

Marshal's fees $4.64.

F. W. COLLINS,
U. S. Marshal,
By R. O. EDWARDS, *Deputy.*

The foregoing and above summons has the following endorsement thereon as follows, to-wit: No. 41. Equity. Circuit court of United States, southern district of Mississippi, July 1st rules, 1901.—The Vicksburg Water Works Company, complainants, *vs.* The Mayor & Aldermen of the City of Vicksburg—Ret'd executed and filed April 20th, 1901. L. B. Moseley, clerk. —— ——, sols. for —.

Bond for Restraining Order.

United States Government for the Western Division of the Southern District of Mississippi.

Know all men by these presents that we, The Vicksburg Water Works Company principal, and M. O. Crumpler and S. S. Hudson, sureties, are held and firmly bound unto the Mayor and Aldermen of the city of Vicksburg, Mississippi, in the sum of $8000.00 to be paid to the said mayor and aldermen, their heirs, executors, administrators, assigns or successors for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this the 16th day of February, 1901.

The condition of the above obligation is such that whereas the Vicksburg Water Works Company of Vicksburg, Mississippi, did on the 14th day of Feb'y, 1901, obtain from the Honorable H. C. Niles, an injunction restraining the Mayor and Aldermen of the City of Vicksburg, its officers, servants, employés or agents, attorneys, counsel and solicitors, whereby they were absolutely restrained from assuming to abrogate and take away the franchise and contract rights of complainant and from further endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to the defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy set out in said bill of complaint and from perpetu-
53 petuating any minutes or ordinances or resolutions of its own, whereby it denies liability or seeks to annul or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved and from any other proceedings against said complainant touching any of the matters in said bill contained,

until this honorable court shall make another order to the contrary hereof.

Now if the said Vicksburg Water Works Company in case said injunction shall be dissolved within thirty days thereafter well and truly pay and satisfy all such costs and damages as shall wrongfully result from suing out its injunction and shall abide by and perform the decree of said court, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

VICKSBURG WATER WORKS COMPANY,
By M. O. CRUMPLER, *Sec. & Treas.*
M. O. CRUMPLER.
S. S. HUDSON.

Signed, sealed and delivered in the presence of
L. B. MOSELEY, *Clerk,*
C. D. BANKS, *D. C.,*
Witnesses.

The above and foregoing has the following indorsement thereon, to-wit: Vicksburg Water Works Co., *vs.* Mayor & Aldermen of the City of Vicksburg,—Bond—Filed Feb'y 16th, 1901. L. B. Moseley, clerk. By C. D. Banks, D. C. S. S. Hudson, att'y for complainant.

Writ of Injunction.

UNITED STATES:

Circuit Court of the United States for the Southern District of Mississippi for the Western Division Thereof.

To the Mayor & Aldermen of Vicksburg, Mississippi, its officers, servants, employees, or agents, attorneys, counsel, solicitors, Greeting:

Whereas a bill of complaint has been lately exhibited in the circuit court for the southern district of the western division of Mississippi, by the Vicksburg Water Works Company to be relieved touching the matters in such bill contained, and praying for an injunction restraining you as hereinafter set forth, and obtaining a fiat of the Honorable H. C. Niles, judge, granting an injunction, and bond and security having been given as required by said fiat and statute,
we therefore strictly enjoin and command you under penalty
54 of contempt of court that you absolutely refrain from assuming to abrogate and take away the franchise and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business, and to coerce said complainant to sell its water works to the defendant for the said inadequate price, and from otherwise carrying on the unlawful conspiracy set out in said bill of complaint; and from perpetuating any minutes, or resolutions or ordinance of its own, whereby it denies liability or seeks to annul

or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved, and from any other proceedings against said complainant touching any of the matters in said bill contained, until this honorable court shall make another order to the contrary hereof.

In testimony whereof, I the undersigned clerk of the circuit court of the United States for the southern district of the western division thereof, have hereunto set my hand and affixed the seal of said court at Vicksburg, Mississippi, this the 16th day of February A. D. 1900.

L. B. MOSELEY, *Clerk.*

[SEAL.] C. D. BANKS, *D. C.*

To the United States Marshal for the southern district of the western division of Mississippi, to serve and return.

Marshal's Return.

The following return is endorsed on the above and foregoing writ of injunction:

Received at Biloxi, Miss., Feb'y 19, 1901, and executed at Vicksburg, Miss., by reading this process to —— Trowbridge, mayor of the city of Vicksburg, Miss., and handing to him a true copy thereof, at the hour of 4.40 p. m. this Feb'y 21st, 1901.

F. W. COLLINS,
U. S. Marshal,
By R. O. EDWARDS, *Deputy.*

Marshal's fees $4.64.

The above and foregoing has the following endorsement thereon, to-wit: No. 41. Vicksburg Water Works Co., *vs.* Mayor & Aldermen of the City of Vicksburg.—Writ of injunction—Filed Feb'y 16th, 1901, at 3 o'clock p. m.—L. B. Moseley, clerk. C. D. Banks, D. C.—Returned executed and filed April 20th, 1901. L. B. Moseley, clerk.

55 *Amended & Supplemental Bill.*

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable H. C. Niles, judge of the United States circuit court in and for the western division of the southern district of Mississippi, thereof sitting at Vicksburg:

Your orator by way of amendment and supplemental to its original bill heretofore filed against the defendant would respectfully

state that since the filing of the said original bill, to-wit on the 16th day of Feb'y 1901:

1st. Your orator would respectfully state that since the passage and approval of the act of the legislature entitled "An act authorizing the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy-five thousand ($375,000) dollars, to purchase or construct, equip and maintain a water works system, construct and establish sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college, and for other purposes." Said act is to be found on page 180 *et seq.* of the sheet acts of the said State and in accordance with its terms and provisions a pretended election was held on the 3rd day of July, 1900, under the authority of — a pretended resolution passed by the defendant on the question of bonding the city for said amounts and purposes was pretended to be submitted to the registered and qualified of — said city under its act, which propositions were carried by a small majority of the voters, which question was in words and figures as follows to-wit:—"Be it resolved by virtue of the authority vested in the mayor and aldermen of the city of Vicksburg, by the act of the legislature of Mississippi, entitled An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy-five thousand ($375,000) dollars to purchase or construct, equip and maintain a water works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college and for other purposes. Approved March 9th, 1900.

An election shall be held on the third (3) day of July on which day the question shall be submitted to the registered and qualified voters of said city whether the bonds of said city to the amount of three hundred and fifty thousand ($350,000) dollars, to purchase or construct, equip and maintain a water works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall; shall be sold and issued for the above named purposes.

Be it further resolved That twenty (20) days' notice shall be given in the manner provided for in said act, of the date, the
56 amount of the bonds to be issued and the purposes for which the same are issued. The ayes and nays being called on the motion that the said resolution be adopted, prevailed affirmatively with the following votes—Ayes—Homberger, Caughlin, Montgomery and Walsh. Nays—Fousse, Campbell and Hayes." Said proposition will be found contained in Minute Book "H." page 444 of the record of the minutes of the defendant.

2nd. Your orator respectfully shows that the proposition submitted to the qualified electors to be voted on to bond the city contains more than one object, in fact several distinct and entirely independent propositions, which were pretended to be submitted, as a whole to the qualified voters of said city, when they should have been sub-

mitted separately unaided by any other proposition and should have been so acted upon by the board of mayor and aldermen in their authority to authorize the submission of the same to the voters, and said acts of the mayor and alderman should have been an ordinance and is therefore void and of no effect.

For these reasons including those already mentioned in the original bill in this cause the said bonds authorized to be issued and sold and said act and resolutions of said board of mayor and aldermen and said election are illegal, void, unauthorized and unconstitutional.

3rd. Your orator would further show as before stated in the original bill of complaint in this cause, the defendant caused its charter to be amended by the legislature of the State of Mississippi in 1886 to provide for the erection and maintenance of a water works system to supply the said city with water or to contract with party or parties who should build and operate water works and the city having elected to enter into a contract with S. R. Bullock & Company and assigns on the — day of November 1886 to provide the defendant, the city, and inhabitants thereof with water for public and domestic purposes for thirty (30) years, at a stipulated price as agreed upon in said ordinance. Therefore said city by its contract and ordinance with S. R. Bullock & Company and assigns are precluded from issuing and selling bonds to build, construct, maintain and operate a water works of its own, as provided by said legislative act and said resolution and said election of 1900; in competition with your orator against its own contract.

The premises considered, your orator prays that this honorable court will enjoin the defendant from issuing and selling said bonds for the purpose of building and constructing water works of its own in competition with your orator and in addition thereto that this honorable court will decree said act, resolution and election to be invalid and unconstitutional, and that the defendant be precluded and restrained and enjoined from constructing water works of its own in said city, until the expiration of your orator's contract. And that the defendant be required to answer this amended bill without making any oath thereto and that your orator be entitled to
57 and have the benefit of all general and special relief as may be just and right.

And as in duty bound your orator will ever pray.

(Signed) M. O. CRUMPLER.

Personally appeared before me L. B. Moseley, of the United States court in and for the western division of the southern district of the State of Mississippi, one, M. O. Crumpler, superintendent and general manager of the Vicksburg Water Works Company and who as an authorized agent of said company makes oath that the foregoing matters and facts stated in the said foregoing amended bill of complaint of *its* own knowledge are true and correct and those stated on *the*, information and belief *it* believes to be true and correct.

Witness my hand and seal of office this 23rd day of April, A. D. 1901.

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

[SEAL.]

S. S. HUDSON AND
A. A. EDWARDS,
Att'ys for Complainant.

The above and foregoing has the following endorsement thereon, to-wit: 41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen. Amendment & Supplemental bill.—Filed April 23rd, 1901, L. B. Moseley, clerk, C. D. Banks, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Demurrer of Defendant to Complainant's Bill.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

The defendant by protestation not confessing or acknowledging all or any of the matters and things, in said plaintiff's bill of complaint contained, to be true in such manner and form as the same are set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:—That complainant has not stated such a case as entitled *him* to any relief in this honorable court:

Because the resolution adopted by the board of mayor and aldermen on November 7th, 1900, which is in words and figures as follows:—

"That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and alder-
58 men deny any liability upon any contract for the use of the water works hydrants:

That from and after August 1900, they will pay a reasonable compensation for the use of said hydrants.

That the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises," was not an action on the part of the board of mayor and aldermen which assumed to abrogate or take away "any of the rights of the said complainant and it is manifest, that no such intention or effect can be imputed to such resolution, and said bill does not charge any other act of conspiracy or design on the part of the said mayor and aldermen whereby they assume to abrogate and take away the franchise or any contract but merely denies legal liability thereunder; and because the act of the legislature of the State of Mississippi approved

on the — day of —— does not impair the obligation of the contract made with Samuel R. Bullock & Company as averred in said bill; and because all of the other averments in said bill contained whereby the said defendant is charged with acts of conspiracy to abrogate and take away the franchise and contract rights of the complainant in contravention of the Constitution of the United States are vague and indefinite and constitute no ground for relief.

3rd. Because the provisions in said contract whereby the exclusive right is given to Samuel R. Bullock & Company and their associates to erect and maintain a system of water works in the city of Vicksburg for supplying the city and its inhabitants with water contrary to the public policy of the State, is unauthorized, illegal and void.

4th. The defendant further demurs to the amended and supplemental bill of complaint and for cause of demurrer say:

That the matters and things in said supplemental bill averred do not entitle complainant to any equitable relief or state any ground of relief cognizable by this court.

Wherefore defendant says that this court has not as appears by said bill any jurisdiction to enable it to entertain said bill of complaint.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg:

Personally appeared before the undersigned a notary public in and for said city, county and State W. L. Trowbridge, mayor of said city of Vicksburg, who after being by me duly sworn states that the foregoing demurrer was not interposed for the purpose of delay.

—— ——.

Sworn and subscribed before me this the — day of —— 1901.

—— ——,
Notary Public.

59 We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

—— ——,
Sol's for Defendant.

The above and foregoing has the following endorsement thereon, to-wit: No. — Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of the City of Vicksburg. Demurrer. Filed April 30th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.—Magruder & Bryson, attorneys at law, 122½ South Washington street, Vicksburg, Miss.

Defendant's Plea.

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

The plea of the defendant The Mayor and Aldermen of the City of Vicksburg to the bill of complaint exhibited against them says:—(not waiving the demurrer herein filed)

The defendant, The Mayor and Aldermen of the City of Vicksburg by protestation not confessing or acknowledging all or any part of the matters and things in said bill mentioned to be true in such manner and form as the same are therein set forth and alleged do plead thereto and for plea say:

That on the — day of March 1887 the Vicksburg Water Supply Company did not as averred in said bill make, execute and deliver a deed of trust "conveying all franchises, ordinances and contract and other property of whatsoever kind or nature" that the said complainant was particular in appending as exhibits copies of all other writings referred to, but did not append a copy of the said deed of trust executed by the said water supply company as aforesaid conveyed the property described therein as follows:—"All of its real and personal property, goods and chattels now owned or which may hereafter be acquired by it, including its land, water works, buildings, pump houses, stand pipes, reservoirs, machinery pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and the reversions, remainder and remainders tolls, rents, issues, income and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water works company now has and can exercise or shall hereafter acquire and
60 possess. And, also, all the estate, right, title, interest, property, possession claim and demand whatsoever, as well in equity as in law of the water company of, in and to the property above described or hereafter acquired, and each and every part and parcel thereof, with appurtenances.

That afterwards as averred *in* said deed of trust was foreclosed and the property therein described was sold to the complainant and the defendant now pleads that the contract made with Samuel R. Bullock & Company as averred in said bill, was not embraced in said, description and no interest in or to the same was by said sale conveyed to complainant and the said complainant did not thereby acquire any right against the defendant.

That the so-called quit claim which was executed on the 18th day of October 1900, and which was signed *as* by Whitney Conant, presi-

dent of the Vicksburg Water Supply Company, as is averred in said bill and is appended as Exhibit "G" falsely states, the description of the property which is contained in said deed of trust.

That the said Conant, president, and W. E. Snow, secretary, had no authority whatever from the said Vicksburg Water Supply Company to make any such quit claim.

That upon its face it appears "that all of the corporate franchises privileges and rights which the Vicksburg Water Supply Company had or could exercise," had been before the date of said quit claim deed, sold at foreclosure under said deed of trust, and that the Vicksburg Water Supply Company, was at the time, a defunct organization, without the right to exercise any corporate function whatever, all of which matters and things, the said defendant avers, to be — and is ready to verify, and pleads the same to said bill and prays judgment whether *he* ought to make further answer to the said bill. And for further plea in this behalf the defendant says:—

2nd. That it is not true as averred in said bill that the said Samuel R. Bullock & Company were empowered by said contract and ordinance between them to organize and create a water works company and to sell and assign said contract and ordinance to any water company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof and now pleads that by the 5th section of said contract it is provided as follows:—"That the said Samuel R. Bullock & Company their associates, successors and assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired hereunder, provided that the said assignment shall not invalidate or affect the bond required by section 7 hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations and the said board of mayor and aldermen shall pass and enact such further and other ordinances in favor of the said corporation as may be necessary to invest in the said corporation the rights and privileges hereby granted."

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That afterwards, to-wit: on the — day of —— in pursuance of the authority conferred by this section the said Samuel R. Bullock & Company did cause to be organized a corporation under the laws of the State of Mississippi known and designated as the Vicksburg Water Supply Company to which said corporation said contract was assigned by the said Samuel R. Bullock & Company and became bound with the consent of the said mayor and aldermen to the terms of said contract:

That by said section it was contemplated and intended that no assignment of said contract should be made except by the said Samuel R. Bullock & Company to a single corporation to be by them used — organized and the transfer to be approved and accepted by the said city, so that the said Vicksburg Water Supply Company had no power or authority to assign said contract either by said deed of trust or otherwise to any one, and the said defendant has not ap-

proved or consented to any assignment by said Vicksburg Water Supply Company of said contract all of which matters and things defendant avers to be true and pleads the same to said bill and prays a judgment of this court whether it ought to be compelled to make further answer to said bill.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

STATE OF MISSISSIPPI, *County of Warren, City of Vicksburg:*

Personally appeared before the undersigned a notary public in and for the said city, county and State, W. L. Trowbridge, mayor of the said city of Vicksburg, who being by me duly sworn on oath states that the matters and facts in the foregoing plea are true and correct as therein stated, and that this plea is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor of City of Vicksburg.

Sworn to and subscribed before me this the 6th day of May, 1901.

P. L. HENNESSEY,
Notary Public.

We hereby certify that in our opinion the foregoing plea is well founded in point of law.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Sol's for Defendant.

The above and foregoing has the following endorsement thereon to-wit: Vicksburg Water Works Company *vs.* The Mayor and Aldermen of the City of Vicksburg.—Plea and answer.—Filed April 30th, 1901.—L. B. Moseley, clerk, C. D. Banks, D. C.

62 *Plea to the Jurisdiction.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

For further plea in this behalf the defendant pleads and says:—

That this court is without jurisdiction to hear and determine the matters in controversy raised by said bill of complaint—

Because: all of the questions involved in said controversy between said complainant and said defendant were taken cognizance of by the chancery court of Warren county, Mississippi, wherein a suit was instituted by the defendant against the complainant on the — day of —— and is now there pending:

That it appeared from complainant's bill herein filed that the only matter in controversy between the complainant and the defendant is, as to whether the contract made with Samuel R. Bullock & Company and his assigns as aforesaid has been transferred to the said complainant and whether the same is now in force against this defendant:

That no act is alleged by the complainant as having been done by the State of Mississippi or this defendant which in any way affects the questions of said liability or has any effect or was contemplated to have such effect upon said contract.

That said suit was instituted in the chancery court as aforesaid by a bill of complaint filed by these defendants, a copy of which is hereto appended.

That the said chancery court has jurisdiction of the questions raised by said bill and that this honorable court is without jurisdiction to hear and determine the same.

All of which things the said defendant avers to be true and pleads the same to the jurisdiction of this court.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY.

STATE OF MISSISSIPPI. *County of Warren, City of Vicksburg:*

Personally appeared before the undersigned a notary public in and for said city, county and State, W. L. Trowbridge, mayor of said city of Vicksburg, who being by me duly sworn on oath states that the matters and facts stated in the foregoing plea are true and correct as therein stated, and that this plea is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor City of Vicksburg.

63 Sworn to and subscribed before me this the 6th day of May, 1901.

P. L. HENNESSEY,
[SEAL.] *Notary Public.*

We hereby certify that in our opinion the foregoing plea is well founded in point of law.

W. J. VOLLER,
MAGRUDER, BRYSON &
DABNEY,
Sold. for Defendant.

The above and foregoing has the following endorsement thereon to-wit: Vicksburg Water Works Company *vs.* The Mayor and Aldermen of the City of Vicksburg.—Plea to the jurisdiction—Filed. April 30th, 1901 L. B. Moseley, clerk, C. D. Banks, D. C.—Magruder & Bryson, attorneys at law, 122½ South Washington street, Vicksburg, Miss.

Motion of Complainant to Strike from the Files Defendant's Demurrers, Pleas, and Answers.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the complainant in the above styled cause and moves the court to strike from the file the pleas, demurrers and answers in this cause because all of said pleas, demurrers and answers are improperly pleaded.

S. S. HUDSON,
Att'y for Complainant.

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Vicksburg Water Works Company *vs.* Board of Mayor and Aldermen of Vicksburg.—Filed June 3rd. 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

Defendant's Answer.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The Answer of the Mayor and Aldermen of the City of Vicksburg to the Original and Supplemental Bill of Complaint Exhibited against Them in This Court by the Complainant Named Therein.

For answer to so much and such parts of said bill as they are advised it is material or necessary for them to answer these respondents say:

64 They admit that the board of mayor and aldermen on November 7th 1900, adopted a resolution which is in words and figures as follows: That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water works hydrants: that from and after August 1900, they will pass a reasonable compensation for the use of said hydrants.

That the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises. But respondents say that this action on the part of the board of said mayor and aldermen "did not assume to abrogate or take away" any of the rights of the said complainant existing by virtue of the alleged contract and

it is manifest that no such intention or effect can be imputed to such resolution.

That the said resolution does not seek to destroy or impair any contract but merely denies legal liability thereunder; that the act of the legislature of the State of Mississippi approved on the — day of —— does not impair the obligation of the contract made with Samuel R. Bullock & Co., as averred in said bill.

That the averments in said bill in this regard do not constitute any ground for relief cognizable within the jurisdiction of this court; that complainant has not averred and set forth in its bill any act having the effect to impair the obligation of said contract and this court is therefore without jurisdiction to hear and determine the matters in said bill contained,

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(The matter enclosed between rules cancelled across the face with pencil.)

and they crave that they may have the same benefit of objection to said bill on said grounds as if formally demurred to and pray judgment of the same accordingly.

Respondents say that all of the questions involved in this controversy between said complainant and said defendant were taken cognizance of by the chancery court of Warren county, Mississippi, wherein a suit was instituted by the defendants against the complainant on the — day of —— and is now there pending.

That it appears from complainant's bill herein filed that the only matter in controversy between the complainant and the defendants is, as to whether the contract made with Samuel R. Bullock & Co., and his assigns, as aforesaid has been transferred to the said complainant and whether the same is now in force against this defendant.

That no act is alleged by the complainant as having been done by the State of Mississippi or these defendants which in any way affects the questions of said liability or was contemplated to have such effect upon said contract. That a copy of the bill of complaint is in said suit instituted in the chancery court aforesaid is herewith filed as Exhibit "I."

65 That the said chancery court has jurisdiction of the questions raised by this complainant's bill and that this honorable court is without jurisdiction to hear and determine the same; all of which things the defendant avers to be true and pleads the same to the jurisdiction of this court and prays accordingly, and as if formally pleaded.

These respondents admit that there is a provision in the contract made between the city and Samuel R. Bullock and Co., whereby the exclusive right is given to Samuel R. Bullock & Co., their successors and assigns for the period of thirty (30) years to maintain a system of water works and to supply said city and its inhabitants with water;

that said provision is in words as follows: "That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Co., their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares, and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use and for making repairs and extensions to said system from time to time during the period in which this ordinance shall be in force."

These respondents nevertheless say that no power was ever conferred either directly or indirectly upon said mayor and aldermen whereby they were authorized to grant by contract, to any person or persons the exclusive privilege for any period of time to furnish and supply said city and its inhabitants with water. That said provision in said contract, is unauthorized, illegal and void and respondents submit that so much and such parts of said bill as is set forth in said provision, in said contract, are insufficient to constitute any ground of relief, and they pray judgment thereof, and crave the same benefit of this objection as if formally demurred to.

Respondents further answering say: That on the — day of March 1887 the Vicksburg Water Supply Company did not as averred in said bill make, execute and deliver a deed of trust "conveying all its franchises, ordinances and contract together with all other property of whatsoever kind or nature" (That the said complainant was particular in appending as exhibits copies of all writings referred to, but did not append a copy of the said deed of trust.)

That the said deed of trust executed by said water supply company as aforesaid, conveyed the property described therein as follows: "All of its real and personal property, goods, and chat-
66 tels now owned or which may be hereafter acquired by it including its lands, water works, buildings, pump houses, stand pipes reservoirs, machinery pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg Mississippi, county of Warren together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders tolls, rents, issues, income and profit accruing therefrom also all and singular the company franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And also all the estate, right title, interest, property, possession claim and demand whatsoever as well in equity as in law of the water company of, in and to the property above

described or hereafter acquired and each and every part or parcel thereof with appurtenances."

That thereafter as averred in said bill said deed of trust was foreclosed and the property therein described was sold to the complainant and the defendant now pleads that the contract made with Samuel R. Bullock & Company as averred in said bill, was not embraced in said description and no interest in or to the same was by said sale conveyed to complainant and the said complainant did not thereby acquire any right against the defendants.

That the so called quit claim deed which was executed on the 18th day of October, 1900, and which was signed by Whitney Conant, president of the Vicksburg Water Supply Company, as averred in said bill and is appended as Exhibit "G" falsely states the description of the property which is contained in said deed of trust.

That the said Conant, president and W. E. Snow, secretary had no authority from said Vicksburg Water Supply Company to make any such quit claim.

That upon its face it appears "that all of the corporate franchises, privileges and rights which the Vicksburg Water Supply Company had or could exercise," had been before the date of said quit claim deed sold at foreclosure under said deed of trust, and that the Vicksburg Water Supply Company, was at the time a defunct organization without the right to exercise any corporate functions whatever, all of which matters and things the said defendant avers to be true and is ready to verify, and pleads the same to so much and such parts of said bill and prays judgment whether *he* ought to be compelled to make further answer to said part and pleads the same benefits hereof as if formally pleaded.

Respondents further say; that it — not true as averred in said bill that the said Samuel R. Bullock & Company were empowered by said contract and ordinance between them and the said defendants to organize and create a water works company and to sell and assign said contract and ordinance to any water company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and
67 provisions thereof and now says that by the 5th section of said contract it is provided as follows:

"That the said Samuel R. Bullock & Company their associates, successors and assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired thereunder, provided that the said assignments shall not invalidate or affect the bond required by section seven hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations and the said mayor and aldermen shall pass and enact such further and other ordinances, and do and perform such other acts including the re-passage of this ordinance in favor of the said corporation as may be necessary to invest in the said corporation the rights and privileges hereby granted."

That afterwards, to-wit: on the — day of —— in pursuance of

the authority conferred by this section the said Samuel R. Bullock & Co., did cause to be organized a corporation under the laws of the State of Mississippi known and designated as the Vicksburg Water Supply Company, to which said corporation said contract was assigned by the said Samuel R. Bullock & Company, and became bound with the consent of the mayor and aldermen to the terms of said contract.

That by said section it was contemplated and intended that no assignment of said contract should be made except by the said Samuel R. Bullock & Company to a single corporation to be by them organized and the transfer to be approved and accepted by the said city, so that the said Vicksburg Water Supply Company have no power or authority to assign said contract either by said deed of trust or otherwise, to any one, and the said defendant has not approved or, consented to any assignment by Vicksburg Water Supply Company of said contract, all of which matters and things defendant avers to be true and pleads the same to such parts and so much of said bill and prays a judgement of this court whether it ought to be compelled to make further answer to said parts of said bill and craves benefit hereof as if formally pleaded.

These respondents further say: That by the 14th section of the contract averred in said bill to have been entered into between the complainant and these respondents by ordinance adopted on the 18th day of November 1886 it is provided as follows:—

"Be it further ordained That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg which shall accrue to the said Samuel R. Bullock & Company their associates, successors and assigns by virtue of the terms and conditions of this ordinance, the said mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually — and cause to be collected upon the taxable property of said city a special tax to be known and designated as the water works tax sufficient to meet and pay all of said
68 obligations and liabilities during the continuance of this contract and until all of said obligations shall be paid and discharged."

That there was no warrant or authority on the part of said mayor and aldermen to make any such provision or contract; that said stipulation is in contravention of the charter of said city and is illegal and void so that said contract is wholly without effect all of which matters and things respondents aver to be true and plead the same to said part of said bill and pray the judgment of this court whether *it* ought to make further answer thereto, and crave benefit hereof as if formally pleaded.

Respondents deny that on the 19th day of November 1886, the said city of Vicksburg received any competitive bids for the erection of water works in said city and they now show the fact to be that a corporation then known as the Vicksburg Water Works Company a short while before said date made overtures to said city and proposed to enter into a contract for the building of water works and that about that time the said Samuel R. Bullock & Co., also proposed to

enter into a contract with said city for said purpose; that a contest arose between these two parties in their endeavors to obtain such a contract from said city; that their propositions were in writing and open and that it was at this stage of the discussion that it was proposed that the consideration of said question should be deferred to a special meeting and all the parties were notified to present bids. That in point of fact no other bids were offered and the board proceeded to consider the propositions of the two parties already made and thereupon awarded said contract to Samuel R. Bullock & Company.

Respondents further answering show:—That by the 25th section of the charter of said city it is provided that the board of mayor and aldermen should not make any contract involving certain expenditures except upon advertisement for sealed proposals.

That by the letter and spirit of said provision the power to make any contract for a supply of water could only be exercised by said mayor and aldermen after an advertisement for bids for same and in pursuance of the bids:

Yet respondents say that said mayor and aldermen did not advertise for bids for a contract to supply water, as required by said charter and that the contract made with Samuel R. Bullock & Co., was not made in pursuance of any such advertisement so that respondents say that said contract so made was unauthorized and is illegal and void, facts respondents aver to be true and plead the same to said parts of said bill and pray judgment and crave the benefit thereof as if formally pleaded.

Respondents further answering say:—That by the twelfth section of said contract it is provided that the property and business of said water works plant should be exempt from taxation for the period of five years and thereafter should not be assessed for more than fifty thousand dollars ($50,000): that said provision is unconstitutional and void and in consequence said contract is unauthorized and illegal.

69

Respondents admit the passage of the ordinance on the 19th day of November 1886, a copy of which appears as Exhibit "B" to complainant's bill but they deny that the same even when accepted by the said Samuel R. Bullock & Co., constituted a valid contract between said Bullock & Co., and respondents. They admit that said alleged contract was assigned by said Bullock & Co., to the said Vicksburg Water Supply Company, which latter company they deny now to be a going concern, but aver the same is defunct without assets, property, franchises or organization and that it has been since the 8th day of August, 1900.

These respondents admit that on the 20th day of November, 1900 it received the notice marked Exhibit "H" to said bill, wherein it is asserted that the Vicksburg Water Works Company claimed to own as assignee the contract made with Samuel R. Bullock & Co., and gave notice that said company had agreed to be bound by the terms of said contract.

These respondents now show to the court, that long prior to said date it had been currently reported that said water works company

claimed not only to own said plant but also was subrogated to the rights of Samuel R. Bullock & Co., under said contract; that in consequence thereof the mayor of the city of Vicksburg addressed several communications to said water works company requesting to know by what authority and by what right it claimed to own said water works and assume — assert that the city of Vicksburg was bound to it by the terms of said contract. That the resolution which is appended to said bill as Exhibit "I" was introduced in said board on the — day of September, 1900, and was pending before said board until the 13th day of November, 1900; that during all of said time complainant refused to make any reply to the said communications. It pretended that it was impossible to make answer thereto it being declared to said board in open session — its constituted representative as the reason for such failure that one of the directors was in Paris and another in St. Louis; although the muniments of its title, such as it was were already in existence and were well known to complainant at that time.

These respondents deny that the water which has been furnished by said water works company since they acquired the ownership thereof has been "good wholesome water fit for all purposes of domestic or manufacturing purposes." On the other hand they aver that said water has for the most part been charged with mud, sediment and other deleterious matter injurious to the health of the people who use the same and unfit for domestic use.

They deny the said Vicksburg Water Works Company has kept and maintained a pressure upon its mains to the extent stipulated and required in the contract with Samuel R. Bullock & Co. That for the failure of said company to comply with said contract in respect of the quality of the water to be furnished and in respect
70 of the pressure required to be maintained upon said mains these respondents say that complainant is not entitled to any relief by virtue of its terms; and that these respondents are released from its obligations.

Respondents say that it is immaterial whether the said city has received for the past fourteen years without complaint, water from the Vicksburg Water Supply Company of a like character with that furnished by the Vicksburg Water Works Co., but they deny that the water which has been furnished by the Vicksburg Water Works Company is of as good quality as that provided by the old company. However that may be these respondents are charged with a trust to the people of the city of Vicksburg and if their predecessors have been false to their duties heretofore and failed to discharge their obligations to the public it is no reason or excuse that the present board of mayor and aldermen should continue a dereliction of its duty.

It has been the history of the corporations which have acquired and seized upon the public utilities that they have sought to evade as far as possible their liabilities and to incur the minimum of expense in the exercise of the public privileges possessed by them and have notoriously sought to press to the furthest limit their exaction

from the public and their encroachments and monopoly of franchises, and the history of said complainant in dealing with the city of Vicksburg is not an exception to the general rule.

Respondents deny that they have arbitrarily, unjustly and illegally proceeded to adopt an ordinance and a resolution assuming to abrogate and take the franchise and contract rights of the complainants as averred *iterum iterumque* in complainants' bill.

They deny that the resolution referred to was adopted in pursuance of any purpose or desire to become the owners of said water works.

Your respondents admit *that* the averments in said bill that an act of the legislature was passed authorizing the city of Vicksburg to issue bonds for the purpose of constructing a city hall and a sewerage system and also for the purpose of either purchasing or building a water works system and authorizing the issue of one hundred and fifty thousand dollars ($150,000) for the latter purpose, but respondents say the question of liability of the city to complainant by virtue of the contract entered into with Samuel R. Bullock & Co., which is raised by said resolution is altogether aside from the scheme and purpose of becoming the owners by purchase or otherwise of a system of water works they say that said alleged contract with Samuel R. Bullock & Co. imposes upon the inhabitants of Vicksburg and its corporate authorities an onerous and extortionate burden, that no such contract would now be made with the said Vicksburg Water Works Company or any other company at the rates prescribed in said ordinance, that they far exceed the average price charged for water in cities situated in like condition and circumstances to Vicksburg.

71 That the question of liability of said city to complainant does not depend upon said act of the legislature; that the resolution adopted by said board was not adopted in pursuance of said act; that whether the city is obligated under said alleged contract is a question which is not affected by or dependent on either the resolution of said board or said act of the legislature; that it is immaterial whether the said act of the legislature had been passed or not or whether your respondents desire to become the owners of water works, it would still be and is the obligation on the part of these respondents in the discharge of their public duties, to deny that they are bound to said complainants by said contract, for they are informed and believe and now charge the fact for the many reasons herein set forth that no liability exists on the part of said city by reason of said contract.

Respondents further show that they have proceeded with this matter conservatively and justly towards the complainant; that it was after mature deliberation and upon the advice and opinion of two legal firms and upon the opinion of the city attorney that they were not bound by said contract, that the resolution in question was by them adopted.

That said resolution upon its face provided that reasonable compensation should be paid to the complainant for the use of water provided by hydrants for fire purposes.

Respondents admit that in pursuance of said act of the legislature an election was held to determine whether bonds should be issued for the purpose of building a city hall, of constructing a sewerage system and of buying or building a water works, but they deny that they have at any time or in any way by reason of said election or otherwise confederated or conspired with any one to injure or destroy the credit of the Vicksburg Water Works Company, or that they have assumed to abrogate or take away the franchise and contract rights of said company or have persistently and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price.

That the averments in said bill in this respect as contained in the thirteenth, fourteenth and fifteenth paragraphs and particularly in the thirteenth paragraph is predicated of said resolution evince a rare capacity for distortion if such a resolution could be capable of such distortion. Said averments particularly in paragraph thirteenth, these respondents, say are mere "words" dealing in vague and indefinite generalities that are but a crude adaption of certain judicial utterances, which were employed as legal conclusions and deductions from the proof of facts in a certain case. If said complainant means to charge these respondents with any other act of conspiracy or otherwise to injure the complainant than the adoption of said resolution then these respondents once and for all deny each and singular all of said imaginary acts.

They deny that they have done any acts for the purpose of
72 disabling the complainant from carrying on its business or to compel it to sell its property at an arbitrary price or to cast a cloud upon its title.

Respondents admit that on the 7th day of November a resolution was adopted by them as averred in the sixteenth paragraph of said bill; but they submit that it is a gratuitous assumption on the part of complainant to designate it in the several parts of said bill as "a resolution and an ordinance." It is to be known by its terms and its import is to be gathered from its face and its character and purpose cannot be changed by any adroit appellation by which it may be designated.

Respondents say that the "wreck and ruin" which may be impending to said water works should "said act of the legislature and said resolution be permitted to stand" as averred in the said bill is no legal ground to question the validity of either said act or resolution.

That the consequences which complainant must face flow from the measure of its legal rights; dependent upon the sole question as to whether any contract exists between said city and said complainant.

Respondents deny that said resolution was adopted by them, and that the suit in the chancery court of Warren county for cancellation of said contract was instituted by them in pursuance of said act

of the legislature and that they were done either to injure the property of complainant or to coerce it to sell said works at an inadequate price; they say that said act authorizing the issuance of bonds to build water works provided also for the construction of a sewerage system, but upon the condition that said city should own its own system of water works which they were authorized either to purchase or erect at its own cost; that said act merely confers authority upon respondents which is optional with them but is not mandatory nor obligatory upon them to take such action; they say that said bill does not charge that said city intends to build any works or has taken any action for that purpose. In fact respondents say that the wisdom and policy of building any works cannot be considered and determined until it be first ascertained whether they are bound to complainant by said contract.

That before the question of building a sewerage system and water works can be entertained by them they deem that it is proper, that, there should first be settled their liability if any under said contract: they consider that it is their duty as public servants to test said question, not only because of the onerous terms of said contract but also because the public welfare requires that said question be settled for they might justly conclude that it would be unwise to build a system of water works in case it should be decided that they are bound by said contract though they may have the legal right to build.

That while they consider it is desirable to build a sewerage system and as a condition they should own the water works, and
73 that it is desirable that the plant of complainant should be purchased by said city at a reasonable and liberal price, yet they say that the very question of the liability of the city under said contract renders any negotiations with said complainant looking to such purchase impracticable that they owe it as a public duty to have the question of their liability determined before any further effort be made to purchase said works from said complainant. So that they say, that said resolution was not adopted in pursuance of said act of the legislature, or by virtue of it, but solely to test said question, as an official duty which they owe, first, that they should not acknowledge a burdensome liability upon the tax payers which they do not believe to exist, and second, that they might act advisedly in determining what action if any should be taken by them in the exercise of the authority, to build or buy, a water works plant.

Respondents say that while the averment in said bill, that the amount of bonds authorized to be issued for water-works, to-wit: the sum of one hundred and fifty thousand dollars ($150,000) is an inadequate sum for the price of complainant's plant is immaterial, yet they deny that it is an inadequate price and they aver and charge the fact to be that said plant is not worth more than one hundred thousand dollars ($100,000) if that: that a new plant in many respects superior to the present one, they are informed can be built for one hundred and twenty five thousand dollars ($125,000): that the old plant has been in operation for fifteen years or about

one third of the average life of such plants, while all the boilers, engines and pumps belonging to it are nearly worn out and are of little value: they deny that they have done any act for the purpose of depreciating the value of said property or to coerce it to sell its property at an inadequate price.

Respondents say that while they have denied their liability under said contract yet they have offered to pay complainant a reasonable and just compensation for the use of hydrants. But that which is reasonable and just to common mortals seems not to be palatable to the greed of a monopoly.

They say that the average gross income of said works now exceeds thirty thousand dollars ($30,000) per annum and its net income is more than twelve thousand dollars ($12,000) of which the payment by the city under said contract amounts to about eight thousand dollars, ($8000).

That the proposition of the city to pay said complainant pending the litigation to test its liability fifty dollars ($50.00) for each hydrant would amount to six thousand dollars ($6,000.) there being one hundred and twenty two hydrants and so they emphatically deny that any act done by them or proposed to be done by them would disable complainant from carrying on its business "or work wreck and ruin" upon its property, aside from the natural consequences which might follow if it be found that said city is not bound by a contract with complainant.

74 Respondents admit that they addressed a communication at the instance of the advisory board asking the complainant if their water works could be purchased. The reply of said complainant to said inquiry is characteristic, a copy of which is herewith appended marked Exhibit "—."

Respondents further answering say that they are not advised how nor when the office holders and seekers from the mayor down dragged the water works into politics; that all of the matters stated in the 19th paragraph of said bill in this respect are wholly immaterial irrelevant and insufficient.

That these respondents deny that anything was ever stated in this regard by said mayor or other office holder by the authority of these respondents or in pursuance of any act of theirs; and as representatives of said municipal corporation. They are not responsible nor are they to be held by any declarations of individuals whether they be office holders or office seekers: that there were no statements or publications during said canvass which were false, and though it is immaterial and irrelevant matter, these respondents nevertheless state the fact to be that while a majority of the said board of mayor and aldermen were in favor of adopting the resolution which was passed in November that nevertheless there were certain members of said board who opposed the adoption of said resolution in the interest of the said complainant, and not in the interest of the public.

That the averment in said bill to the effect that publications and declarations were made by candidates for office that if elected they would bring suit to cancel said contract is an absurd charge upon its face for it was long before said election was held that the then

board of mayor and aldermen adopted said resolution whereby they deny their liability under said contract, and that it was in pursuance of that resolution that a suit was instituted to cancel said contract.

Your respondents say that while the matters averred in the 20th and 21st paragraphs of said bill are wholly irrelevant and immaterial nevertheless they are informed and believe and charge the fact to be that one, M. O. Crumpler who was the agent and promoter of the Water Works Company, complainant, was advised in the city of Vicksburg by the then superintendent of the Vicksburg Water Supply Company of the purpose to authorize the city to buy said works; that he was informed of the details of said proposed litigation.

Respondents deny the vague and indefinite charges that inflammatory and untruthful articles were written against said water works company and that rumors of damaging effect which were utterly false were circulated by them; though sheltered in indefinite terms and although irrelevant and immaterial they deny that they were written, circulated or were put afloat by these respondents, or their officers or agents or in pursuance of any conspiracy against said company.

These respondents say that the averments in the 22nd
75 paragraph while they are immaterial and irrelevant are wholly untrue and they deny that any member of said advisory board ever made any proposition to buy said water works for himself or his associates.

They admit that Mr. E. C. Carroll, a gentleman of probity and of honor was requested by a foreign corporation to open negotiations for the purchase of said works, that he, the said E. C. Carroll had no interest whatever in said negotiations.

Your respondents say, of this matter, that they never heard of it until after complainant had filed his bill.

They say it is true that a suit was instituted in the chancery court of Warren county, Mississippi, against complainant by the City of Vicksburg to have such contract declared void and it is true that it was done at the instigation of said board of mayor and aldermen because it goes without saying that the acts which one may do are instigated by himself, but it is not true that said suit was instituted in confederation with said leading citizen as insinuated in said paragraph.

Your respondents say to the 25th and 26th paragraphs of said bill that the matters averred and contained are irrelevant immaterial and multifarious and constitute no ground for relief and the legal sufficiency thereof is now submitted to the court as if specially demurred to.

Your respondents admit for the use of fire hydrants a price was stipulated to be paid by the mayor and aldermen to the said Samuel R. Bullock & Co.; they deny however that the amount which is due under said ordinance was due to the complainant, and they deny that these respondents offered to pay to the said complainant an inadequate amount or price for the use of said hydrants.

They deny that their proposition to pay a reasonable compensa-

tion to the said complainants was "a scheme by which they confederated, conspired and endeavored to coerce and force complainant into an act whereby the ordinance would be annulled." It is an absurd legal proposition that the offer by the city to pay the complainant $50.00 a year for a hydrant pending the litigation as to whether there was any contract would amount to any waiver of the rights of their property and it was perfectly competent for the said complainant to have accepted such payment on account.

These respondents show the fact to be that during the month of January, 1901, the mayor and aldermen by resolution referred water works bills to a committee, that said committee sought to have an agreement with the management of said water works company as to what should be paid by way of a reasonable compensation pending said litigation: that said company refused absolutely to take anything less than the amount which was stipulated in said contract although they proposed to give bond to cover whatever excess the court might find in such payments: That at the last meeting of said committee, the superintendent of said company and its attorney were present and as they had refused to make any other con-
76 cession the report of said committee which is set forth in said bill was adopted.

That at that time they did not object to the form of said report and that their rights would be concluded by the acceptance of the $50.00 which respondents show is the prevailing rate at Shreveport, Natchez and Meridian.

They admit that said report was adopted by the board of mayor and aldemen and that there was a reservation that said payments should not effect the rights of said city, and it necessarily and legally followed that the rights of the complainant would not also be thereby impaired. However this may be, on the next succeeding day, to-wit on February 13th, 1901, there appeared in one of the papers of the city of Vicksburg the following paragraph.

"There appeared an article in our paper yesterday to the effect that it was reported that Mr. Crumpler stated that he would cut off public hydrants, after reasonable notice was given to the city and underwriters, if the city did not pay the company's bill due on the first of January. Mr. Crumpler authorizes us to say that what he stated was substantially as follows: "The city's proposition to pay the company was only a partial payment and that it was so worded and hedged about that if accepted by the company it would make the company commit an act that would be a false position with reference to the contract with the city, and might be construed the breaking of the contract, and for those reasons the company could not accept under the conditions offered by the city, and that if the city continued to refuse to pay except under those conditions it would soon put the company in a position that it could not furnish water any longer for fire protection, and that it did not want to do this, but would be forced to do so."

That at once and before the filing of this bill and some days before the fiat was obtained for the injunction which was issued in this suit, to-wit on February the 14th, 1901, the mayor of the city of

Vicksburg seeing said paragraph and being advise- for the first time that the said complainant objected to said resolution on that ground addressed and delivered to Mr. M. O. Crumpler the following letter.

Mr. M. O. Crumpler, supt. of the Vicksburg Water Works Co.

DEAR SIR: I notice in the Evening Post what purports to be a statement from you to the effect, that the offer of the city to pay you $50.00 each for the use of fire hydrants, was made upon such conditions as you could not accept. It is my understanding and I am so advised also by the city attorney, that it was not the intention of the mayor and aldermen to impose any conditions by which your rights, in the controversy with the city should be in any way affected. I am therefore prepared to take your receipt for said payments stipulating that your rights in the premises shall not be impaired or waived by accepting payment as aforesaid.

Very respectf'y,

(Signed) W. L. TROWBRIDGE, *Mayor.*

77 That this communication was made in a spirit of fairness to the said complainants, that they might be amply compensated pending said suit for the use of their fire hydrants.

The complainant has charged these respondents with "endeavoring to disable it from carrying on its business, with destroying its credit and the value of its property, with coercing it to sell its water works for an inadequate price and of otherwise carrying on an unlawful conspiracy and doing other illegal and unlawful acts in furtherance of said conspiracy" but has not specified a single act on the part of the city evincing such purpose, and while said charges are vague and indefinite and do not call for an answer in the manner and form in which they are pleaded, nevertheless these respondents, say, as to such charges, that they deny, that they have done or authorized to be done by any one, and act evincing any such purpose or desire. That the city of Vicksburg is responsible in its corporate capacity as a municipality for the acts of its officers done by them under the guise and color of authority but not otherwise.

Respondents further answering say that the matters and things contained in complainant's amended and supplemental bill are irrelevant immaterial and afford no ground of relief to the complainant and their legal sufficiency is now submitted to the court and judgment thereof is craved as if formally demurred to, and respondents further answering say:—That there does not appear any ground for the equitable relief sought by the complainant by reason of the matters and things averred in its original and amended bills:—and now having fully answered defendants pray to be dismissed hence with their reasonable costs and with damages for the wrongful suing out of said injunction, a bill of particulars whereof is herewith filed.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg,
Western Division of Southern District of Mississippi:

Personally appeared before the undersigned an U. S. commissioner in and for said western division of southern district of Mississippi, W. L. Trowbridge, mayor of the city of Vicksburg, who being by me duly sworn on oath states on behalf of the defendants that the matters and things stated in the foregoing answer as of his own knowledge are true, and correct, as therein stated and such as are stated on information and belief he verily believes to be true, and that the matters affirmatively alleged and pleaded are true in fact and that this answer is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor of the City of Vicksburg, Miss.

Sworn to and subscribed before me this the 21st day of June, 1901.

JOSEPH H. SHORT,
United States Commissioner.

[SEAL.]

78 We hereby certify that in our opinion the demurrers and pleas set forth in the foregoing answer are well founded in point of law and that same are not interposed for delay.

MAGRUDER, BRYSON & DABNEY,
Sol's for Defendants.

The above and foregoing has the following indorsement thereon, to-wit: No. 41. Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of the City of Vicksburg.—Answer.—Filed January 21st, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.—Magruder & Bryson, attorneys at law, 122½ South Washington street, Vicksburg, Miss.

Defendant's Notice of Damages Claimed.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Damages.

To the Vicksburg Water Works Company:

You will take notice that in case said court shall sustain the motion to dissolve the injunction in this case the defendants will claim damages for the wrongful suing out of said injunction as follows:—

1st. To attorneys' fees $3500.

2nd. To amount paid complainants in pursuance of said injunction $2850.

3rd. To damages for unlawful interference with the duties of said defendants in promoting and conserving the health and comfort of the inhabitants of said city $2500. and for such other and general damages as defendants may lawfully claim.

W. J. VOLLER, *City Att'y.*
MAGRUDER, BRYSON & DABNEY,
Sol's for Def't.

The above and foregoing has the following endorsement thereon, to-wit: No. 41. Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of the City of Vicksburg. Particulars of damages. Filed June 21st, 1901. L. B. Moseley, clerk. C. D. Banks.

79 *Motion to Dissolve Injunction.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The defendants now come and move the court for a dissolution of the injunction heretofore issued against them and for ground of said motion say:—

1st. Because said injunction was improvidently issued.

2nd. Because the bill and amended bill filed by said complainants do not raise any question or propound any demand or right cognizable within the jurisdiction of this court.

3rd. There is no equity upon the face of said bills.

4th. Because the injunction is in many respects indefinite and vague and so uncertain that it is not possible to determine what acts are embraced in said injunction.

5th. Because said injunction should be dissolved by reason of the matters of law and fact set forth in said defendants' answer to said bill.

W. J. VOLLER,
MAGRUDER, BRYSON AND
DABNEY, *For Motion.*

The above and foregoing has the following endorsement thereon, to-wit: 41. The Vicksburg Water Works Co., *vs.* The Mayor and Aldermen of the City of Vicksburg.—Motion to dissolve injunction—Filed June 21st 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

Complainant's Motion to Strike from the Files the Answer, Demurrers and Pleas.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendants.

To W. J. Voller, Esq.; Mess. Magruder, Bryson & Dabney, defendant's solicitors:

You will please take notice that the Vicksburg Water Works Company herein will, on July 1st, 1901, being the first day of the next July term to be holden in Vicksburg, Miss., at the opening
80 of said court or as soon thereafter as counsel can be heard, make application for an order to take from the files the paper purporting to be an answer, demurrers and pleas filed by said defendant on the 21st day of June, 1901, and for such other and further order as to the court shall seem just. (A copy of complainant's motion therefor being hereto attached. Dated at Vicksburg, Miss. this 29th day of June, 1901.

S. S. HUDSON &
A. N. EDWARDS,
Sols. for Complainant.

(*Copy of Motion Above Referred to.*)

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainants,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG,
Defendants.

Now comes The Vicksburg Water Works Company, the complainant herein and moves this honorable court to take from the files the paper purporting to be an answer, demurrer and pleas filed by The Mayor and Aldermen of the City of Vicksburg, the defendants, in said cause on the 21st day of June, 1901, and for such other and further order and relief as to the court shall seem just, and for the grounds of said motion say:—

1st. That said defendant heretofore to-wit:—on the 30th day of April, 1901, filed a demurrer to the bill of complaint in this cause for want of jurisdiction and that the said demurrer is pending and undetermined.

2nd. That said defendant heretofore, to-wit—on the 30th day of April, 1901, filed a plea to the jurisdiction of this court in this cause

and that the said plea to the jurisdiction is pending and undetermined.

3rd. That heretofore on the 30th day of April, 1901, the said defendant filed a plea in bar to said bill of complaint and that said plea in bar is pending and undetermined.

4th. That said answer was prematurely filed.

5th. That there is embodied in said answer a plea in abatement.

6th. That there is embodied in said answer a demurrer to the whole bill of complaint.

7th. That there is embodied in said answer and plea to the said bill of complaint viz. that there is another suit pending in the chancery court of Warren county, Mississippi, for the same matter, set forth in said bill of complaint.

8th. That there are improperly joined in the said paper
81 filed by the defendant as aforesaid, demurrers to the whole bill of complaint, pleas in bar to said bill of complaint, a plea in abatement to the said bill of complaint for want of jurisdiction in this court.: and the answer to said bill.

S. S. HUDSON,
A. N. EDWARDS,
Sols. for Complainant.

This cause came on to be heard on the foregoing motion, and the same being considered by the court, it is therefore ordered and adjudged & decreed that the same be over-ruled.

The above and foregoing has the following endorsement thereon to-wit:—41. Filed June 29th, 1901.—L. B. Moseley, clerk.

Motion to Strike from the Files the Answers, Demurrers, & Pleas.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Now comes The Vicksburg Water Works Company the complainant herein and moves this honorable court to take from the files, the paper purporting to be an answer, demurrers and pleas, filed by The Mayor & Aldermen of the City of Vicksburg the defendant, on the 21st day of June, 1901, and for such other and further order and relief as to the court shall seem just and for the ground of said motion say:—

1st. That said defendant heretofore, to-wit:—on the 30th day of April, 1901, filed a demurrer to the bill of complaint in this cause for want of jurisdiction and that the said demurrer is pending and undetermined.

2nd. That said defendant heretofore, to-wit:—on the 30th day

of April, 1901, filed a plea to the jurisdiction of this court in this cause and that the said plea to the jurisdiction is pending and undetermined.

3rd. That said answer was prematurely filed.

5th. That there is embodied in said answer a plea in abatement.

6th. That there is embodied in said answer a demurrer to the whole bill of complaint.

7th. That there is embodied in said answer a plea to the said bill of complaint, viz. that there is another suit pending in the chancery court of Warren county, Mississippi, for the same matter, set forth in said bill of complaint.

82 8th. That there are improperly joined in said paper filed by the defendant as aforesaid, demurrers to the whole bill of complaint, pleas in bar to said bill of complaint, a plea in abatement to the said bill of complaint for want of jurisdiction in this court, and the answer to said bill.

S. S. HUDSON &
A. N. EDWARDS,
Sols. for Complainant.

The above and foregoing has the following endorsement thereon, to-wit: No. 41. Vicksburg Water Works Company, *vs.* The Mayor and Aldermen of the City of Vicksburg.—Motion to take from the files paper purporting to be an answer, demurrers and pleas. Filed June 29th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Motion for Temporary Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Now comes The Vicksburg Water Works Company, the complainants herein, by S. S. Hudson and A. N. Edwards its solicitors and moves this honorable court under the seal thereof directed to the defendants, its officers, attorneys and servants and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of said complainant, and from endeavoring to disable said complainant from carrying on its business and to coerce said complainant to sell its water works to defendant whereby it denied liability or seeks to annul or refuse to pay complainant the contract price for water and that said defendant be compelled to pay to complainant for water used by said defendant as per the ordinance price set forth in said bill of complaint, and to continue to do so until this cause is heard

upon its merits, that the rights of all parties may be preserved and for such other and further order and relief as to the court seems just.

S. S. HUDSON &
A. N. EDWARDS,
Sols. for Complainant.

The above and foregoing has the following endorsement thereon to-wit:—No. 41. Vicksburg Water Works Company *vs.* The Mayor and Aldermen of Vicksburg,—Motion for temporary injunction. Filed June 29th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

83 *Motion to Withdraw Demurrers, &c., and File Answer.*

In the U. S. Court for Western Division, Southern District of Mississippi.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN.

The defendants move for leave to file the answer herein, marked filed heretofore by the clerk as of June 21st, and for leave to withdraw the separate demurrers and pleas heretofore filed on April 30th, as the said answer embodies all the matters of defense, which are set forth in said pleas and demurrers.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

The foregoing has the following endorsement, to-wit:—41. Motion. Ent. Order Book No. 1 page 11. Filed July 1st, 1901. L. B. Moseley clerk, C. D. Banks, D. C.

Order Allowing the Defendant to Withdraw Pleas, Demurrers, &c., and File Answer.

In the U. S. Cir. Court for the Western Division of the Southern Dist. of Miss.

No. —.

VICKSBURG WATER WORKS
vs.
MAYOR & ALDERMEN.

Coming on to be heard the motion to dissolve the injunction herein, and the defendants now having moved the court for leave to file their answer, herewith presented and marked by the clerk, as

filed on June 21st, 1901, and to withdraw the plea and demurrer marked filed April 30th, 1901.

It is ordered that leave be granted to file said answer and withdraw said pleas and demurrers but that the question of the jurisdiction of this court to hear the matters in controversy raised by said answer shall be first presented and argued.

This 1st day of July, 1901.

H. C. NILES, *Judge.*

The above and foregoing has the following endorsement, thereon to-wit:—Vicksburg Water Works Company *vs.* Mayor and Aldermen. Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

84 *Order Dissolving Injunction.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1904, Third Day of July, 1901.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF VICKSBURG.

This cause coming on upon the motion to dissolve the injunction heretofore issued in this cause and the court now being advised in the premises and it appearing that there is no Federal question involved in the controversy presented by the pleadings it is therefore ordered adjudged and decreed that said injunction be and the same is hereby dismissed and that execution issue therefor for the costs in this case.

H. C. NILES, *Judge.*

The above and foregoing order appears in Minute Book No. 1 at page 578 of the official records of this office.

Defendant's Claim for Damages.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

And now come the defendants and propound their claim for damages for the wrongful suing out of injunction herein which has this day been dissolved and move the court to hear and determine

the same in accordance with the notice and bill of particulars of the same heretobefore filed and served upon complainant.

VOLLER,
MAGRUDER, B. & D.

The above and foregoing has the following indorsement thereon to wit:– 41—Motion. Filed July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

85 *Motion to Continue Restraining Order in Force Until Appeal Is Heard by U. S. Supreme Court.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant-.

Now comes the complainant in the above styled cause and moves the court to continue the restraining order in force as granted until the appeal in this cause is heard by the Supreme Court of the United States, or until the further order is granted by this court.

S. S. HUDSON &
A. N. EDWARDS,
For Motion.

The above and foregoing has the following indorsement thereon, to-wit:—41. Vicksburg Water Works Company *vs.* The Mayor and Aldermen of Vicksburg,—Motion to continue restraining order.—Filed July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Petition for Appeal to the Supreme Court of the United States and Order Allowing the Same.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The above plaintiff, The Vicksburg Water Works Company, conceiving itself aggrieved by the order entered on the 3rd day of July, 1901, in the above entitled proceedings, doth hereby appeal from said order to the Supreme Court of the United States and it prays that this its appeal may be allowed, and that the transcript of the record and proceedings and papers upon which said order was duly

authenticated may be sent to the Supreme Court of the United States.

S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Plaintiff.

86 VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF VICKSBURG.

And now to-wit, on the 3rd day of July, 1901, it is ordered that the appeal be allowed as prayed for.

H. C. NILES,
Circuit Judge.

The above and foregoing has the following indorsement thereon to-wit:—#41. Vicksburg Water Works Company *vs.* Mayor and Aldermen of Vicksburg, Miss.—Petition and order for appeal.—Filed, July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Supersedeas Bond.

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Supersedeas Bond.

Know all men by these presents that we, the Vicksburg Water Works Company and M. O. Crumpler and S. S. Hudson all of the city of Vicksburg, county of Warren, and State of Mississippi, are held and firmly bound unto the above named Mayor and Aldermen of the City of Vicksburg in the sum of two hundred and fifty dollars to be paid by the Vicksburg Water Works Company for the payment of which, well and truly to be made, we bind ourselves, and each of us, ourselves and each of our heirs, executors and administrators, jointly and severally, firmly, by these presents.

Sealed with our seals and dated the 4th day of July, 1901.

Whereas the above named Vicksburg Water Works Company has prosecuting and appealed to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the judge of the circuit court of the United States for the Western division of the southern district of Mississippi.

Now therefore the condition of this obligation is such that if the above named Vicksburg Water Works Company *is* prosecuted said appeal to effect and answer all costs, if it fail to make said appeal

good then this obligation shall be void otherwise the same shall be and remain in full force and virtue.

VICKSBURG WATER WORKS CO.,
By M. O. CRUMPLER, *Sec. & Treas.*
M. O. CRUMPLER.
S. S. HUDSON.

87 Signed and delivered and taken and acknowledged this the third day of July, 1901, before me.

H. C. NILES,
Circuit Judge.

Approved by
—— ——.

The above and foregoing has the following indorsement thereon to-wit:—Bond $250.00—Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

Order Continuing Restraining Order until U. S. Supreme Court Renders Decision on Appeal.

United States Court for the Western Division of the Southern District of Mississippi.

Upon the appeal being allowed herein it is ordered that the temporary restraining order herein be continued until the 1st day of January, 1902 or if before then until the decision of the appeal herein by the Supreme Court upon condition however that the complainant diligently prosecute its appeal and file a motion at or before the next term of the Supreme Court to advance the appeal in this cause upon the docket of the Supreme Court of the United States and upon the further condition that the injunction bond heretofore given in this case shall stand and continue in force for any additional liability which may be incurred by reason of this new order.

The principal and sureties upon said bond now in open court consenting thereto.

Ordered, adjudged and decreed this the 3rd July, 1901, in open court.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon to-wit: Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C. Ent. Minute Book # 1, page 581 L. B. Moseley, clerk.

Assignment of Errors.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Assignment of Errors.

Afterwards, to wit, on the 3rd day of July, in the year of our Lord 1901, at the July term, 1901, of the circuit court of the United
88 States for the western division of the southern district of Mississippi, at Vicksburg, Mississippi, comes the Vicksburg Water Works Company, by S. S. Hudson and Albert N. Edwards, its solicitors and says, that in the record and proceedings in the above entitled matter, there is manifest error in this to-wit:—

1. The court erred in dismissing the suit and bills of complain*ant* for want of jurisdiction. The allegations of the bills raised questions of the power of the State of Mississippi, and of the city of Vicksburg, to impair the obligation of the contract of said complainant with said city under the act of the legislature of Mississippi, approved the 18th day of March, 1886; and the ordinance of the city council adopted November 18th, 1886, accepted by Samuel R. Bullock & Company for themselves associates and assigns.

First. By the enactment of the act of the legislature of the State of Mississippi approved March 9th, 1901, second, by the resolutions passed by the city council of the said city calling an election upon the question (among others) of issuing bonds to purchase or construct water works and the election of July 3rd, 1901, and the vote thereunder, whereby said proposition was carried, third, by the resolutions adopted by the city council of said city on November 7th, 1900, undertaking to annul the said contract and change the hydrant rentals from sixty five dollars ($65.00) to "a reasonable compensation, fourth, by the report of the water committee of said city of February 7th, 1900, and of fifty dollars, ($50) per hydrant from and after the passage of the resolutions of November 7th, 1900.

Wherefore the said Vicksburg Water Works Company prays that the order of the said circuit court of the United States for the western division of the southern district of Mississippi, be reversed, and the said circuit court of the United States for the western division of the southern district of Mississippi, be ordered to proceed to hear and determine the above entitled cause.

S. S. HUDSON &
A. N. EDWARDS,
Sols. for Complainant.

The above and foregoing has the following indorsement thereon to-wit:—Vicksburg Water Works Company *vs.* The Mayor and Al-

dermen of the City of Vicksburg—Assignment of errors.—Filed July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

89 *Certificate of Judge of the Question of Jurisdiction.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The final decree having been entered herein on the 3rd day of July, 1901, dismissing this suit and the bill and amended and supplemental bill therein:

Now therefore this court in pursuance of the 2nd paragraph of the 5th section of the act of Congress, approved March 3rd, 1891, and entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes;" hereby certifies to the Supreme Court of the United States, for decision, the question of the jurisdiction alone of this court over this cause as follows: Whether this cause presents a controversy which involves a Federal question under the laws or Constitution of the United States.

The only question which I considered and decided in dismissing this suit and the bills of complaint is whether a Federal question was involved upon the pleadings.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of the City of Vicksburg.—Order certifying question of jurisdiction to Supreme Court.—Filed July 4th, 1901. L. B. Moseley, clerk, C. D. Banks, D. C. Ent. M. B. No. 1, page 580, L. B. Moseley, clerk.

Citation and Notice of Appeal to U. S. Supreme Court.

UNITED STATES OF AMERICA, *ss:*

To the Mayor & Aldermen of the City of Vicksburg, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western division of the southern district of Mississippi, wherein The Vicksburg Water Works Company is appellant and The Mayor and Aldermen of the City of Vicksburg *is* respondent to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected

and speedy justice should not be done to the parties in that behalf.

90 Witness, the Honorable Melville W. Fuller, Chief Justice of the United States this 3rd day of July, in the year of our Lord, 1901.

H. C. NILES, *Judge.*

Attest, L. B. MOSELEY, *Clerk.* [SEAL.]

The above and foregoing has the following indorsement thereon to-wit:—# 41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of the City of Vicksburg. Citation and notice of appeal to U. S. Supreme Court—Filed July 4th, 1901 L. B. Moseley, clerk.

Motion to Advance Cause on Docket.

In the Supreme Court of the United States, October Term, A. D. 1901.

No. 392.

VICKSBURG WATER WORKS COMPANY, Appellant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Appellee.

Now comes the said appellant, and moves this honorable court, to advance this cause on the docket, and hear it as *an* early a date as the convenience of the court will permit, and for reasons therefor it states:—

That the only question in this cause is, whether the United States circuit court, for the western division of the southern district of Mississippi, has jurisdiction of this cause.

The sole question certified to this court by the circuit judge, is whether the cause presents a controversy arising under the laws or Constitution of the United States.

Respectfully submitted.

JAMES A. CARR,
S. S. HUDSON, AND
A. N. EDWARDS,
Att'ys for Appellant.

In the Supreme Court of the United States, October Term.

THE VICKSBURG WATER WORKS COMPANY, Appellant,
vs.
THE MAYOR AND ALDERMEN OF VICKSBURG, MISS., Appellee.

To W. J. Voller, Esq., and Magruder, Bryson & Dabney, attorneys of record for the appellee in the above styled case:

You are hereby notified that the appellant in the above named cause will on the 14th day of October, A. D. 1901 on the meeting of

the United States Supreme Court, on that day or as soon
91 thereafter, as counsel can be heard submit for the consideration of the court the foregoing motion.

JAMES A. CARR,
S. S. HUDSON, AND
A. N. EDWARDS,
Att'ys for Appellant.

To the U. S. marshal to execute.
L. B. MOSELEY, *Clerk.* [SEAL.]

August 24th, 1901.

Marshal's Return Thereon.

Received this writ August 24th, 1901, executed August 28th, 1901, at Vicksburg on W. J. Voller, by handing him a true copy of this writ, and on Magruder, Bryson and Dabney by handing J. C. Bryson a member of the firm, a true copy of this writ.

F. W. COLLINS, *Marshal,*
By E. C. YELLOWLEY, *D. M.*

Fees, $4.00.

The above and foregoing has the following indorsement thereon, to-wit:—Returned and filed Oct. 31st, 1901. L. B. Moseley, clerk.

Replication.

United States Circuit Court for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Replication.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifest errors, uncertainties and insufficiencies of the answer and pleas, (except the plea to the jurisdiction of the court), of the said defendants, for replication thereunto, saith, that he doth and will aver, maintain, and prove his said bill to be true, certain and sufficient in the law, to be answered unto by said defendants, and that the answer, of the said defendants is very uncertain, evasive, and insufficient in law, to be replied unto by this repliant; without that, that any other matter or thing in said bill contained, material or effectual in the law, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready

92 to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Comp't or Repliant.

The foregoing has the following indorsement thereon, to-wit:—Vicksburg Water Works Company, repliant, *vs.* Mayor and Aldermen of Vicksburg.—Filed August 1st, 1901. L. B. Moseley, clerk, by C. D. Banks, D. C.

Order Continuing in Force Temporary Restraining Order.

January Term, 1902.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG, MISS.

This day this cause came on to be heard on motion of the Vicksburg Water Works Co., to continue in force the temporary restraining order heretofore granted in this cause on the bond filed and approved—the same being considered by the court, it is therefore ordered adjudged and decreed by the court that the temporary restraining order heretofore granted in this case, be and the same is hereby continued in force on the bond filed and approved, until the decision of the Supreme Court of the United States is had in said cause now before it on a jurisdictional question.

Ordered, adjudged and decreed in open court this 8th day of Jan'y, 1902.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Vicksburg Water Works Co., *vs.* Mayor and Aldermen of the City of Vicksburg.—Motion.—Filed Jan'y 8th, 1902. L. B. Moseley, clerk, C. D. Banks, D. C.

Motion to Require Complainant to Execute New Bond Both for Injunction & Supersedeas.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATERWORKS CO.
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant and moves the court to require the complainant to execute new bonds in the above styled cause, both as to the injunction in said cause and supersedeas, and shows:

93 That each of said bonds is signed by the Vicksburg Waterworks Company as principal and M. O. Crumpler and S. S. Hudson as sureties: That there are no other sureties upon the said bonds or either of them. That the Vicksburg Waterworks Company's property is now encumbered by a deed of trust to secure an indebtedness of $350,000: that said mortgage indebtedness is largely in excess of the value of all of the property owned by said principal excluding the contract with the city of Vicksburg which is now in litigation.

That M. O. Crumpler owns no real estate in the State of Mississippi; that he is assessed with $30.00 of personal property in Warren county, the same being the county of his residence; that defendant is advised and believes that the said M. O. Crumpler has no other property;

That S. S. Hudson the other surety on said bonds is assessed with a small tract of real estate in Yazoo county, State of Mississippi, and with his home in the city of Vicksburg, at a valuation of $2500 and a small tract of land in the county of Warren, assessed at $440. He is also assessed with $1010 of personal property; that defendant is informed and believes that the foregoing is the whole of the property owned by said S. S. Hudson, and that it does not equal the amount of said bonds and the said homestead is exempt from execution.

The premises considered, defendant is advised and believes that the said principal and the said sureties are not worth the face or sums named in said bonds, and that the said bonds are both insufficient and inadequate to guarantee the said defendant against damage. And to the end that the said complainant should be required to give good and sufficient bonds, defendant now prays that the court examine said sureties and ascertain what property they may own, and require the said complainant to execute good and sufficient bonds.

W. J. VOLLER AND
MAGRUDER, BRYSON & DABNEY,
For Motion.

Sworn to and subscribed before me this Jan. 7th, 1902, by J. C. Bryson attorney for def't.

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

The above and foregoing has the following indorsement thereon to-wit:—#41. Vicksburg Waterworks Co. *vs.* Mayor & Aldermen of Vicksburg. Filed Jan. 9th, 1902. L. B. Moseley, clerk. C. B. Banks, D. C.

94 *Order Taking under Advisement Defendant's Motion to Require New Bonds.*

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This cause coming on to be heard on the motion of defendant to require the complainant to give a new injunction bond and also a new supersedeas bond with good and sufficient sureties, and also on that certain other motion, herein made by defendant to reconsider and set aside the order herein made on the 8th day of January, 1902, continuing the restraining order against said defendant in force until such time as the Supreme Court of the United States should pass upon the appeal from a former decree of this court in this cause dismissing the same for want of jurisdiction. It is ordered that said motion be heard and determined as of this term in vacation, within thirty days of this date, with leave to both parties to introduce such testimony as the court may deem proper.

Ordered this 9th day of January, 1902.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—#41—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg.—Order taking under advisement.—Filed Jan. 9/1902. L. B. Moseley, clerk.

Motion of Defendant to Set Aside Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant in the above styled cause and moves the court to set aside the order herein made on the 8th day of January, 1902, continuing in force the injunction heretofore granted until the decision of the Supreme Court of the United States is had in this cause, and for ground for this motion shows:

That according to the terms and provisions of the original restraining order granted herein against the defendant, the said defendant was enjoined and restrained from denying liability or refusing to pay the said complainant the stipulated price for water under the terms and provisions of a certain alleged contract between the said defendant and complainant.

95 That the said complainant has since said injunction failed and refused to supply water to the said defendant under said alleged contract for the period of — days, and for the period of other days has failed and refused to supply a sufficient quantity of water to furnish adequate protection to its citizens.

That nevertheless the said complainant now asks and demands that the said defendant pay for the said water as stipulated in said alleged contract regardless of whether the same has been supplied or not as stipulated and required by said alleged contract and refuses to allow any offset for the time which it has neglected and refused to supply said water as stipulated and have suggested that complainant would have the right to have certain members of the said board of mayor and aldermen cited to appear before this court on account of the failure and refusal of the said members to ratify and approve the account propounded against the said defendant for the use of the hydrants used by the said compainant in and about supplying the said defendant with water.

The premises considered defendant shows; that said order continuing the said injunction in force compelling defendant to pay for the said water whether the same be furnished or not, is inequitable and unjust and should be set aside and to the end that defendant may have such relief as in equity it is entitled: it now prays that the said order be set aside or so modified as not to compel the said defendant to pay for water which it has not received.

And as in duty bound it will ever pray.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

STATE OF MISSISSIPPI, *County of Warren:*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

Personally appeared before the undersigned, clerk of said court, W. L. Trowbridge, mayor of the city of Vicksburg, who after being by me duly sworn on oath states that the matters and things set forth in the foregoing motion are true and correct as stated.

In testimony whereof witness my signature this the 9th day of January, 1902.

W. L. TROWBRIDGE, *Mayor.*

Sworn to and subscribed before me this the 9 day of January 1902.

L. B. MOSELEY,
Clerk U. S. Circuit C'rt, S. Dist. of M.,
C. D. BANKS, *D. C.*

The above and foregoing has the following indorsement thereon, to-wit:—#41—Vicksburg Water Works Co. *vs.* Mayor and Aldermen of V'b'g.—Filed Jan'y 9th, 1902. L. B. Moseley, clerk, C. D. Banks, D. C.

96 *Motion of Defendant to Withdraw Claim for Damages.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant and moves the court for leave to withdraw, without prejudice, its claim for damages filed herein on the 3rd day of July, 1901, on account of the wrongful suing out of the injunction herein against the said defendant.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
For Motion.

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Filed Jan. 9th, 1902. L. B. Moseley, clerk, C. D. Banks, D. C.

Order Allowing Withdrawal of Claim for Damages.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

This cause coming on this day to be heard on the motion of defendant for leave to with-draw without prejudice its claim for damages for the wrongful suing out of the injunction herein against the said defendant and the court having considered the matter; it is ordered and decreed that the said defendant be and it is hereby allowed to withdraw said demand for damages without prejudice and said demand is hereby dismissed without prejudice to defendant.

Ordered and decreed this the — day of January, 1902.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon to-wit:—# 41—Vicksburg Water Works Co. *vs.* Mayor and Aldermen of the City of Vicksburg—Order allowing withdrawal claim for damages.—Entered—Jan. 9th, 1902, M. B. # 1 at page 607.

97 *Order Continuing in Force the Injunction on the Bond Heretofore Filed.*

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG, MISS.

Jan. Term, 1902.

This cause came on to be heard on the motion of Vicksburg Water Works Company to continue in force the temporary restraining order, heretofore granted in this cause on the bond filed and approved.

The same being considered by the court—it is therefore ordered, adjudged and decreed by the court that the temporary restraining order heretofore granted in this cause be and the same is hereby continued in force on the bond filed and approved until Tuesday the 8th day of July, A. D. 1902 unless otherwise ordered by a decision of the Supreme Court of the United States had in said cause now pending before said court on a jurisdictional question.

Ordered this the 18th day of Jan., 1902.

H. G. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Vicksburg Water Works Co. *vs.* The Board of Mayor and Aldermen of Vicksburg. Filed and entered on M. B. 1 p. 610 at 12.30 p. m. Jan. 18 -902. L. B. Moseley, clerk. By J. H. Short, D. C.

Mandate of the Supreme Court of the United States Reversing Decree & Remanding Cause to Circuit Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the southern district of Mississippi, Greeting:

Whereas lately in the circuit court of the United States for the southern district of Mississippi before you, or some of you, in a cause between The Vicksburg Water Works Company, complainant, and The Mayor and Aldermen of the City of Vicksburg, defendants, wherein the decree of the said circuit court, entered in said cause on the 3rd day of July, A. D. 1901, is in the following words, viz:

"This cause coming on to be heard upon the motion to dissolve the injunction heretofore issued in this cause and the court now being advised in the premises and it appearing that there is
98 no Federal question involved in the controversy presented by the pleading it is therefore ordered, adjudged and decreed that said injunction be and the same is hereby dissolved and that

the bill of the complainant be and the same is hereby dismissed, and that execution issue therefor for the cost in the case.

H. C. NILES, *Judge.*"

as by the inspection of the transcript of record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and one, the said cause came on to be heard before the said Supreme Court, on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that the said complainant, The Vicksburg Water Works Company, recover against the said defendants one hundred and ninety-two dollars and fifteen cents for its costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said circuit court to take proceedings therein according to law.

April 7, 1902.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of May, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Costs of Complainant.

Clerk	$87.15
Printing record	85.00
Attorney	20.00
	$192.15

The above and foregoing has the following indorsement thereon to-wit:—Supreme Court of the United States. No. 392. October term, 1901.—The Vicksburg Water Works Company *vs.* The Mayor and Aldermen of the City of Vicksburg. Mandate. Filed and ent. May 12th, 1902, L. B. Moseley, clerk. J. H. Short, D. C.

99 *Motion to Restrain Defendant from Using Underground Gutter for Sewerage Purposes.*

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

Petitioner Vicksburg Water Works Co. moves the court for an injunction restraining the defendant Mayor and Aldermen in this case, from permitting, allowing or authorizing the inhabitants or any one from connecting with or using the under ground gutter on Washington street in Vicksburg for sewerage purposes for reasons shown in the motion as well as set out in the original bill.

S. S. HUDSON &
SMITH, HIRSH & LANDAU,
For Motion.

The above and foregoing has the following indorsement thereon to-wit: Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Motion—Filed Oct. 20th 1902 and entered Law motion Docket # 1 page 13. L. B. Moseley, clerk. J. H. Short, D. C.

Order Allowing Time to Take Testimony and Appointing a Commissioner to Take Same.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Adjourned Term, 24th Day of October, 1902.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF CITY OF VICKSBURG.

This day this cause came on to be heard on motion of the Vicksburg Water Works Company asking for an order from this honorable court to take testimony on a motion asking for an injunction restraining the defendant Mayor and Aldermen of the City of Vicksburg from using authorizing or permitting the inhabitants or other persons of Vicksburg from connecting with or depositing sewerage matter or using the same for sewerage purposes in what is known as an underground gutter on Washington street, Vicksburg, Mississippi and described in the original bill in this cause: and the same having been considered by the court, it is ordered, adjudged and decreed that the Vicksburg Water Works Company and defendant be allowed thirty days from this date on which to take testimony on the said motion.

And it is further ordered, adjudged and decreed that
100 Joseph H. Short, is hereby appointed commissioner of this court to take testimony on said motion.

Ordered, adjudged and decreed this 24th day of October, A. D. 1902.

H. C. NILES, *Judge.*

Entered on Minute Book #1 at page 629 of the official records of this office.

Motion by Complainant for Decree Pro Confesso.

VICKSBURG WATER WORKS CO.
vs.
MAYOR AND ALDERMEN.

Now comes the complainant Vicksburg Water Works Co. in the above styled cause and moves the court for a decree *pro confesso* in this cause because the defendant has failed to file any answer herein.

S. S. HUDSON,
SMITH, HIRSH & LANDAU,
For Motion.

The above and foregoing has the following indorsement thereon to-wit:—Vicksburg Water Works Co. *vs.* Mayor & Aldermen. Motion. Filed Oct. 23rd, 1902. L. B. Moseley, clerk. J. H. Short, D. C.

Order Extending Time Within Which to Take Testimony.

VICKSBURG WATER WORKS CO.
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

This cause came on to be heard on the motion in open court to take testimony in this case.

It is therefore ordered, adjudged and decreed that either party shall have until the first Monday in January, 1903, within which to take testimony in this case upon the issues of fact.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—#41. Equity. V'burg Water Works Co. *vs.* Mayor & Aldermen.—Order. Filed and entered M. B. 1 p. 630 Oct. 24th, 1902. L. B. Moseley, clerk, J. H. Short, D. C.

101 THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Mississippi:

The President of the United States of America to the marshal of said district, Greeting:

We command you that you summon M. O. Crumpler, A. L. Pierce, J. B. Smith & Wm. Stanton, that all excuses ceasing and all business laid aside, they do appear before me, a special commissioner — the circuit court of the United States, for the western division of the southern district of Mississippi, at Vicksburg, Miss., November 20th, 1902, there and then to testify according to their knowledge, in a cause pending before said court, in which The Vicksburg Water Works Company — plaintiff, and The Mayor and Aldermen of the City of Vicksburg — defendant, on the part of said Vicksburg Water Works Company. And this they shall in nowise omit, under penalty of one hundred dollars, and the consequences of such omission.

Witness the Hon. M. W. Fuller Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Vicksburg this the 8th day of November A. D. 1902.

J. H. SHORT,
Special Commissioner.

The foregoing has the following marshal's return thereon.

Received this writ on Nov. 8th, 1902, and on Nov. 8th, 1902 served the same in Vicksburg, on M. O. Crumpler, A. L. Pierce, J. B. Smith and Wm. Stanton, by handing each of them a true copy of this writ.

EDGAR S. WILSON,
U. S. Marshal,
By E. C. YELLOWLEY,
Deputy.

Fees $2.00.

The above and foregoing has the following indorsement thereon to-wit:—No. —. U. S. circuit court, western division of the southern district of Mississippi. Nov. 20th 1902. Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of City of Vicksburg. Spa. Witnesses.—M. O. Crumpler, A. L. Pierce, J. B. Smith and Wm. Stanton. Returned and filed this 10th day of Nov. 1902. L. B. Moseley, clerk. J. H. Short, D. C. Attorney —— ——.

102 *Order Extending Time Within Which to Take Testimony.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

Order.

This cause coming on to be heard on motion of the complainant for further time within which to take testimony in this case, and the same having been considered by the court, it is therefore ordered, adjudged and decreed, that the complainant Vicksburg Water Works Company, and defendant, Mayor and Aldermen, be, and they are hereby given until the 1st day of January, 1904, within which to take testimony in this case.

Ordered, adjudged & decreed, this 18th day of June, 1903.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Equity—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Order—Filed June 19th, 1903, and entered on M. B. 2 at page 22. L. B. Moseley, clerk. J. H. Short, D. C.

Petition Praying that the City Water Works & Light Company be Substituted as Complainant.

Circuit Court of the United States for the Western Division of the Southern District of Mississippi. In Equity.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG, MISSISSIPPI.

Your petitioner The City Water Works & Light Company, a corporation organized under the laws of the State of South Dakota, would respectfully state that on the first day of December, 1903, it purchased by warranty deed all of the property real, and personal, choses in action and in possession, all rights claims and demands, and all evidences of debt, belonging or in any wise appertaining to the aforesaid Vicksburg Water Works Company, and particularly all its rights in the aforesaid suit; and the deed thereto is recorded in Deed Book 101, page 414, of the records of deeds of Warren county, Mississippi, and a copy of it is herewith filed and made Exhibit "A" to this petition. And your petitioner is now in possession of all of the aforesaid property and is operating the same.

103 The premises considered your petitioner asks that it be substituted as complainant in the aforesaid suit and that it may succeed to all the rights and remedies to which the said Vicksburg Water Works Company is entitled in the said suit, and the rights of the said Vicksburg Water Works Company in all the decrees, orders depositions pleadings etc., had in said suit or which may hereafter be had; and that it may be permitted to prosecute the said suit in all respects as though it were the Vicksburg Water Works Company; and as in duty bound your petitioner will ever pray, etc.

CITY WATER WORKS & LIGHT CO.,
By HUDSON & FOX & SMITH,
HIRSH & LANDAU, *Attorneys.*

EXHIBIT "A."

In consideration of ten dollars cash in hand paid and for other good and lawful considerations, the Vicksburg Water Works Company, of Vicksburg, Warren county, Mississippi, hereby convey and warrant unto the City Water Works & Light Company the following described real and personal property, subject, however, to all bonded indebtedness now existing against the said property, belonging to the Vicksburg Water Works Company, situate, lying and being in Vicksburg, and Warren county, Mississippi, to-wit:—

All square twenty-three (23) and lots one hundred and twenty-one (121), one hundred and twenty-two (122), one hundred and twenty-three (123), and one hundred and twenty-four (124) in square twenty-seven (27) and a strip of land sixty (60) feet wide lying between said squares, as laid down on the Vicksburg Wharf & Land Company survey as recorded on page three sixty-two (362) of *Block* No. Sixty-two (62) of the records of deeds of said county and also a strip of land — (60) feet wide off of the south end of lot five hundred and eight (508) in square twenty-four (24) and a strip sixty feet wide off of the south end of lots five hundred and nine (509) and five hundred and ten (510) in square twenty-five (25) of the said survey, cut off by lines parallel with the south lines of said squares; also that certain parcels of land in said survey bounded and described as follows, to-wit: Beginning at the southwest corner of lot one hundred and twenty-one (121) in said square twenty seven (27) and running thence north thirty-one (31) degrees and thirty-six (36) minutes east along the west line of said squares twenty seven (27) and twenty-three (23), five hundred and eighty nine and nine tenths (589.9) feet to the northwest corner of said square twenty-three (23) thence north sixty-nine degrees and forty-four (44) minutes west fifty and nine tenths (50.9) feet to the center of the track of the Louisville, New Orleans and Texas Railway Company, thence south thirty one (31) degrees and thirty six (36) minutes west down the center of said track two hundred and ninety one and twenty two one-hundredths (291.22) feet, thence north
104 sixty nine (69) degrees and forty four (44) minutes west fifty and nine one hundredths (50.09) feet to the east line

of the said square twenty-four (24), thence south thirty one (31) degrees and thirty six (36) minutes. West along said line sixty-one and eighteen one hundredths (61.18) feet to the south east corner of said square twenty four (24), thence south sixty nine (69) degrees and forty four (44) minutes east fifty and nine one tenths (50.9) feet to the center of said track, thence south thirty one (31) degrees and thirty six (36) minutes west along the center of said track two hundred and thirty seven and four tenths (237.4), and thence south sixty nine (69) degrees and forty-four (44) minutes east fifty and nine tenths (50.9) feet to the place of beginning. Also a right of way and privilege of constructing a tunnel under the track and property of the Louisville, New Orleans and Texas Railway Company, which track and property is now located over and through the last described parcel of land, which right of way was granted to the Vicksburg Water Supply Company by Samuel R. Bullock *et al.*, by deed of November twelfth, eighteen hundred and eighty eight, recorded in Deed Book No. Sixty-five (65) pages three hundred and ninety five (395) and three hundred and ninety-six (396) of the records of deeds of Warren county, Mississippi.

Also parts of lots thirty nine (39) and forty (40) in square three (3) according to the plan of James R. Searles' re-survey of Castle Hill, recorded in Deed Book Fifty-nine (59) page three hundred and thirty (330) of the records of deeds of said county, and more particularly described as follows: Commencing at the southwest corner of lot forty (40) of the said square as established by the said Searles' re-survey; thence along the south line of lot forty (40) two hundred and eighty (280) feet to an iron post, thence north twenty nine (29) degrees and fifteen (15) minutes west (true bearing) one hundred and forty one and one half (141½) feet to an iron post on the northern line of lot thirty nine, thence along said north line one hundred and eighty (180) feet to its intersection with Walnut street to an iron post, thence along the front of said lots thirty nine (39) and forty (40) on the east side of Walnut street one hundred (100) feet to an iron post to the point of beginning, together with all water works, buildings, pump houses, stand pipe, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipment situate in the city of Vicksburg, county of Warren and State of Mississippi, and together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in any way appertaining and the reversion and reversions, remainder and remainders, tolls, rents, issues, profits and income accruing therefrom and also all land tenements, hereditaments and all other property whatsoever real and personal now owned or which may hereafter be acquired by said water company.

Also all and singular the corporate franchises, privileges, rights and liberties, which the Vicksburg Water Works Company now hath and can exercise or shall hereafter acquire and possess.

105 And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the water company of, in and to the property above

described or which may hereafter be acquired, and each and every part and parcel thereof with the appurtenances.

Also that certain written contract made by and between the City of Vicksburg, Miss., and Samuel R. Bullock & Company, dated on the eighteenth day of November, eighteen hundred and eighty-six, for the rental of water hydrants for the use of the city and the supply of the inhabitants thereof with water for a period of thirty years.

In witness whereof the Vicksburg Water Works Company has caused these presents to be signed by its vice-president and its corporate seal attested by its secretary to be hereunto affixed this thirty first day of July, A. D. 1903

VICKSBURG WATER WORKS COMPANY,
By ALBERT N. EDWARDS,
[SEAL.] *Its Vice-President.*

Attest:
M. O. CRUMPLER, *Secretary.*

STATE OF MISSOURI, *City of St. Louis, ss:*

This day personally appeared before the undersigned a notary public in and for the city of St. Louis State of Missouri the within named Albert N. Edwards, vice president of the Vicksburg Water Works Company, who acknowledged that he signed, caused the corporate seal of the said company to be affixed, and delivered the foregoing instrument as the act and deed of the said company on the day and year therein mentioned.

Given under my hand and official seal this 31st day of July, A. D. 1903.

P. L. GURNEY,
Notary Public. [SEAL.]

My term expires December 19th, 1906.

STATE OF MISSISSIPPI, *Warren County:*

This day before me, the undersigned a notary public in and for the city of Vicksburg, Mississippi, personally appeared M. O. Crumpler, secretary of the Vicksburg Water Works Company, who acknowledged that he signed, affixed the corporate seal of the said company and delivered the foregoing instrument as the act and deed of the said company on the day and year therein mentioned.

106 Given under my hand and official seal this 3rd of August, A. D. 1903.

WM. WAGGONER,
Notary Public. [SEAL.]

My commission expires March 7th, 1904.

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 1st day of December, 1903, at 10.05 o'clock a. m. and duly recorded in Deed Book No. 101, page 414, *et seq.*

Witness my hand and seal of said court this 1st day of December, 1903.

J. D. LAUGHLIN, *Clerk,*
By J. E. GORMAN, *D. C.* [SEAL.]

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county, hereby certify that the foregoing three pages and twenty-six lines contain a true and correct copy of the deed from the Vicksburg Water Works Company to the City Water Works and Light Company as the same appears on file and of record in my said office.

Witness my hand and seal of said court this 2nd day of May, 1904.

J. D. LAUGHLIN, *Clerk,*
By J. E. GORMAN, *D. C.* [SEAL.]

The above and foregoing has the following indorsement thereon, to-wit:—41 Equity.—Vicksburg Water Works Co. *vs.* Mayor and Board of Aldermen of City of Vicksburg, Miss. Petition.—Filed December, 2nd, 1903. L. B. Moseley, clerk. J. H. Short, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Motion by Complainant to Suppress Cross-interrogatories.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR & ALDERMEN OF VICKSBURG.

Now comes the complainant, The Vicksburg Water Works Company, by its attorneys, and moves the court to suppress the cross interrogatories in this cause, propounded to J. J. Powers, T. Streuby, E. S. Butts, J. M. A. Brennan, J. B. Smith, D. H. Herman,
107 T. I. Flanagan, C. Linstrom, J. Voewinkle, numbered as follows, to-wit: Ex. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 35 and 36; those propounded to T. C. Thomas, as follows, to-wit: 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; those propounded to H. J. Trowbridge as follows to-wit:—1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 to forty one inclusive; those propounded to H. H. Harralson to-wit: 34 and 35; because,

1st. These depositions are taken by written interrogatories addressed to the above witnesses, and the questions asked by defendant are not in rebuttal of, or connected with, any matter brought in direct examination, and complainant would have no opportunity of a re-direct examination of the said witnesses regarding such matters.

Second. Said questions in some instances are irrelevant and incompetent, containing new matter entirely which was not touched upon in direct examination and in other instances the city is estopped from asking such questions.

3rd. And for other reasons to be shown on argument of this motion.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Attys for Compl't.

The above and foregoing has the following indorsement thereon, towit:—41. Equity. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of the City of Vicksburg.—Motion to suppress cross-interrogatories.—Filed Jan'y 8th, 1904. Ent. Eq. O. B. page 36. L. B. Moseley, clerk. J. H. Short, D. C. S. S. Hudson and Fox, attorneys at law, Vicksburg, Miss.

Motion to Modify Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant and moves the court for a modification of the injunction granted in the above styled cause against the said defendant so as to make the same definite and certain and for ground of this motion shows: that said injunction is vague and uncertain.

That defendant is in doubt as, to the scope of said injunction and for that reason is greatly hampered and embarrassed in dealing with said complainant lest it be found in contempt of his court.

Defendant further shows: that the real and only serious contest arising from the pleadings in this cause is as to whether this
108 complainant is liable under an alleged contract between it and the said complainant for rentals of fire hydrants owned by said complainant and now and heretofore being used by the said defendant.

Defendant is advised and so states that the injunction ought in equity to be limited in its scope and effect to the question of the payment of said rentals, and therefore now moves the court to so modify the same, but in any event to modify the terms of said injunction so as to advise this defendant particularly what act or acts

it must refrain from doing with reference to said complainant in order that it may avoid being in contempt of court and whether or not this defendant will be considered as violating the said injunction if it should build and operate a water works system of its own independent of the one now being operated by complainant.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Solicitors for Defen't.

The above and foregoing has the following indorsement thereon to-wit: 41. Equity.—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg—Motion to modify injunction, —Filed Jan'y 8th, 1904. L. B. Moseley, clerk. J. H. Short, D. C. And Ent. L. M. D. 1 p. 3.

Petition to Open Depositions.

Circuit Court of the United States, Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the honorable the judges of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Now come the complainant and the defendant in this cause by their attorneys and move the court to open the depositions of A. L. Metz, R. E. Milligan, R. W. Jones and —— —— taken in this cause and now sealed and in the hands of the clerk of the said court having been filed this day.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
For Complainant.
MAGRUDER, BRYSON & DABNEY.

O. K.

The above and foregoing has the following indorsement thereon to-wit:—41 Equity.—Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Petition to open depositions—Filed Jan'y 9th 1904, L. B. Moseley, clerk. J. H. Short, D. C.

109 *Order to Open Depositions.*

Circuit Court of the United States, Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day this cause having come on to be heard on motion of complainant and of defendant to open the depositions of A. L. Metz, R. E. Milligan, R. W. Jones and —— —— this day filed herein, and it having appeared that there was no objection to the said motion, both complainant — having joined therein; now, therefore it is hereby ordered and decreed that the said depositions have their seals broken and that they be opened. Ordered and decreed this 9th day of January, A. D. 1904.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—41 Eq. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Order to open depositions.—Filed January 9th, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

Motion to Hear Cause at Jackson, May, 1904, Term Next.

In the Circuit Court of the United States, Western Division of the Southern District of Mississippi, January Term, 1904.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable H. C. Niles, judge of the circuit court of the United States in and for the southern district of Mississippi, western division thereof.

Now come the defendant and complainant by their attorneys respectively and move the court to set the above entitled cause for trial at the next May term, 1904 of the said court to be held at Jackson, Miss., on the 2nd day of the said month; and to allow both sides until the first day of March, 1904, within which to take testimony in this case.

HUDSON & FOX,
SMITH, HIRSH & LANDAU, *Att'ys.*
W. J. VOLLER &
BRYSON & DABNEY, *Sol's for Def't.*

110 The above and foregoing has the following indorsement thereon, to-wit:—41 Equity. Vicksburg Water — Co. *vs.*

Mayor and Aldermen of the City of Vicksburg,—Motion to hear at May Jackson term.—Filed and ent., L. M. B. Jan'y 12th, 1904. J. H. Short, D. C.

Order Setting Cause Down for Trial at the May Term, 1904, at Jackson.

Circuit Court of the United States, Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day this cause came on to — heard upon motion of defendant and complainant by their attorneys to set the above entitled cause for hearing at the next May term, 1904, of this court, to be held at Jackson, Mississippi, on the first Monday of the said month, and to allow both parties until the first day of March 1904, in which to take testimony in the said cause; and by consent of both parties thereto, it is ordered and decreed that the said cause be submitted for final hearing in vacation and that the same be set for trial by this court on the first day of said May term, 1904, of this court at Jackson, Mississippi on the 2nd day of said month; and it is further ordered and decreed that both parties to the said cause be allowed until the first day of March, 1904, in which to take testimony therein.

Ordered and decreed this 12th day of January, A. D. 1904.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon to-wit:—41. Equity.—Vicksburg Water Warks Co. *vs.* Mayor & Aldermen of City of Vicksburg.—Order to hear at Jackson May term.—Filed and ent. M. B. 2 p. 47. Jan'y 12, 1904. L. B. Moseley, clerk.

Motion of City Water Works & Light Company That Court Grant Motion of Substitution Heretofore Made.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the City Water Works & Light Company, by its attorneys and moves the court to grant its petition filed on the 2nd
111 day of December, 1903, in this cause, requesting that it be substituted in the name and place and stead of The Vicks-

burg Water Works Company, the present complainant in this cause, and that it adopt all the pleadings, orders, proofs, decrees, etc., heretofore had and made in this cause, or that may hereafter be made, and that the same be as valid and binding on it and on defendant as if it had been the original complainant.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Att'ys for Petitioner & Complainant.

The above and foregoing has the following indorsement thereon, to-wit: No. 41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Motion — substitution.—Filed May 2nd, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

Complainant's Consent to the Substitution of City Water Works & Light Company as Complainant.

CITY WATER WORKS & LIGHT COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

We consent to the filing of the bill of the City Water Works & Light Company and that the relief prayed for in the said bill may be granted.

VICKSBURG WATER WORKS COMPANY,
By HUDSON & FOX &
SMITH, HIRSH & LANDAU, *Att'ys.*

The above and foregoing has the following indorsement thereon to-wit:—City Water Works & Light Company *vs.* Mayor & Aldermen City of Vicksburg.—Filed May 5th, 1904. L. B. Moseley, clerk.

Answer of Defendant to City Water Works & Light Company.

Circuit — of the United States, Southern District of Mississippi.

#41. Chancery.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant, The Mayor and Aldermen of the City of Vicksburg, and for answer to the petition filed herein on December 2, 1903, by the City Water Works & Light Company or to so much and such parts thereof as defendant is advised it is necessary or material for it to answer, answering says:

112 That it denies that the City Water Works and Light Company, a corporation under the laws of the State of South Da-

kota, purchased by deed or otherwise, that it now owns the property, real and personal, or any part thereof of The Vicksburg Water Works Company, complainant herein, or that the said City Water Works & Light Company purchased or now owns the choses in action and in possession or the rights, claims and demands or all the evidences of debt or in any wise appertaining to the said complainant, The Vicksburg Water Works Company, as alleged in said petition; and defendant further denies that the said City Water Works & Light Company, has any interest in the subject matter in said suit or that it should be admitted as a party complainant in this suit.

W. J. VOLLER &.
BRYSON & DABNEY &
CATCHINGS & CATCHINGS,
For Defendant.

The above and foregoing has the following indorsement thereon to-wit:—No. 41 Chancery. Vicksburg Water Works Co. *vs.* Mayor & Aldermen City of Vicksburg. Answer of defendant to petition of City Water Works & Light Co. asking to be admitted as a party defendant.—Filed May 5th, 1904. L. B. Mosely, clerk.

Original Bill in the Nature of & Supplemental Bill.

In the Circuit Court of the United States in and for the Western Division of the Southern District of the State of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the honorable judge of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Humbly complaining your orator, City Water Works & Light Company, a corporation duly organized and existing under and by virtue of the laws of the State of South Dakota, and a citizen of said State, brings this its original bill of complaint in the nature of a supplemental bill against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation organized and existing under the laws of Mississippi, and located in Warren county in said State.

And thereupon your orator complains and says:

That on the 3rd day of April, 1901, the Vicksburg Water Works Company, a corporation organized and existing under and by virtue of the laws of the State of Mississippi, having its principal place of business in Vicksburg, filed its bill of complaint with exhibits in this honorable court against the said Mayor & Aldermen of the City of Vicksburg, the said bill of complaint and exhibits being in words and figures as follows, to-wit:

113 *Copy of Original Bill.*

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

To the honorable the judges of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Humbly complaining, your orator, The Vicksburg Water Works Company, a corporation duly organized and existing under the laws of Mississippi, and a citizen of said State, and having its principal place of business in Vicksburg therein brings this its bill of complaint against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation organized and existing under the laws of Mississippi, and located in Warren county in said State.

1st. And thereupon your orator, by the undersigned, its solicitors in this behalf, complains and says that, it and said defendant are organized as corporations as aforesaid and that on the 18th day of March 1886, the said city of Vicksburg, caused its charter to be amended by the legislature of the State of Mississippi, in words and figures as follows, to-wit: "to provide for the erection and maintenance of a system of water works to supply said city with water and to that end to contract with a party or parties who shall build and operate water works," whereby said city was empowered to provide and contract for a system of water works. Which said act was approved on the 18th day of March, 1886, and is set out in full in the Acts of 1886 of the Legislature of the State of Mississippi, page 695, reference to which is hereby made.

2nd. Your orator further shows that on the 19th day of November, 1886, the said city of Vicksburg received competitive bids for the best terms and conditions for the city and for the franchise rights, etc., S. R. Bullock and Company and other bidders submitting bids; and said bids or offers were referred to the mayor and aldermen of the city of Vicksburg, who thereupon made an investigation of the propositions offered by the respective competitive bidders, and according to the minutes of its proceedings on — day of —— 1886, accepted the proposition of S. R. Bullock & Company, their associates, successors and assigns, as shown per Minute Book — of the proceedings of the board of mayor and aldermen. A copy of which minutes is hereto filed and made a part hereof, and marked Exhibit "A," to this bill. And on the —
day of —— 188-, the mayor and aldermen of the city of
114 Vicksburg, pursuant to the said act of the legislature of Mississippi, duly passed and adopted and ordinance for the

construction and maintenance of a system of water works, and thereby entered into a contract with said Bullock & Company therefor, a copy of which said ordinance and contract entered into between Bullock & Company, their associates, successors and assigns and defendant is hereto attached and marked Exhibit "B" and made a part hereof.

3rd. Your orator further shows that in accordance with the said contract and ordinance and as provided therein, S. R. Bullock & Company were empowered to organize or create a water works company, and to sell or assign said contract and ordinance to any water works company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof.

4th. Your orator further shows that said Bullock & Company on the — day of —— 1887, chartered and organized under the laws of Mississippi, the Vicksburg Water Supply Company, a corporation, a copy of said charter is hereto attached and marked Exhibit "C" and made a part hereof. And on the first day of March, 1887, said Bullock assigned and sold said contract to the Vicksburg Water Supply Company, now and at all times a going concern, and doing business in Vicksburg, Warren county, Mississippi. A copy of said assignment is herewith filed and marked Exhibit "D" and made a part hereof. And on the — day of —— in accordance with the terms and provisions of said contract and ordinance the said supply company being the assignee and *bona fide* owner of the same, and as required by the agreement therein contained, gave defendant notice, accepting the terms and conditions of said ordinance and contract, which notice is duly recorded on page — of the Minute Book, numbered — of said defendant, a copy of which notice is hereto filed and marked Exhibit "E" and made a part hereof. Said notice and acceptance of said ordinance was received and an entry thereof was made in its records, a copy of which entry is hereto attached and marked Exhibit "F" and made a part hereof.

5th. Your orator further shows that Bullock & Company proceeded to build and construct said water plant; as per specifications in said ordinance, and did build and complete said water works plant as specified in said ordinance, on or about the — day of —— 188-. And after inspection of said water works plant by defendant, the city, on the — day of —— 188-, the water works plant was accepted by said defendant the city as having been completed in every respect, and having fully complied with all the provisions of said ordinance and contract in every respect.

6th. Your orator further shows that since the completion and acceptance of said water works, which is a period of about fourteen years, there has never been any complaint of any kind or character whatsoever, by word or resolution by the defendant, the city, or otherwise, that the water company had in any manner forfeited or violated the ordinance or contract with the defendant, the
115 city; on the contrary, said defendant, the city, understood and knew that said water company was so faithful in and

with respect to execution of its part of the ordinance that said defendant, the city, without question, issued and paid the said water company, semi-annually, the price and sum of the rental stipulated in said ordinance up to the time the city fully decided it wanted a water works of its own, which was on or about July —, 1900.

7th. Your orator further shows that heretofore on the — day of March, 1887, said supply company duly made, executed and delivered a deed of trust conveying all its franchises, ordinances and contracts, together with all other property of whatsoever kind or nature, then or thereafter acquired, to secure the payment of its issue, $250,000 of first mortgage bonds, and said deed of trust was thereupon duly recorded in said Warren county; and a copy thereof is hereto attached marked Exhibit "X" and made a part hereof.

8th. And therefore default having been made in the payment of interest on said bonds, the same was foreclosed on the 8th day of August, 1900, and all the said franchises, ordinances, contracts and property conveyed in said deed were sold, pursuant to the terms of said deed of trust, to the said Vicksburg Water Works Company, which is evidenced by deed made and executed by trustee, recorded in Book — page — of the records of deeds of Warren county, Mississippi. The said Vicksburg Water Works Company is a corporation, duly, organized under the laws of Mississippi, and doing business in said city of Vicksburg, and the owner of said water works property and operating the same.

9th. Your orator further shows that on the 18th day of October, 1900, the said Vicksburg Water Supply Company executed a quit claim deed to the said Vicksburg Water Works Company, conveying all rights, title and interest it might have or hereafter acquire in said water works property, franchises, ordinances and contracts; a copy of which deed is hereto attached and marked Exhibit "G" and made a part hereof.

10th. And in pursuance of the purchase by said Vicksburg Water Works Company of the said property, ordinances, franchises and contracts, the said Vicksburg Water Works Company gave the said city notice in writing of said purchase and assignment, and filed with said city its written acceptance of the terms and provisions of said ordinance; a copy of which notice and acceptance is hereto attached and marked Exhibit "H" and made a part hereof. And at the same time, said company filed with and furnished to said city, documentary evidence of its title and ownership of said franchises, ordinances, contracts and property.

11th. Your orator further shows that the said city of Vicksburg has since the completion and acceptance of the said water works as aforesaid, continuously received and used the water furnished by said water works and paid for the same during the period of about fourteen years as aforesaid wthout question or complaint; and said water has at all times been and is now good and wholesome
116 for public and private use and an adequate supply for the needs of said city and its inhabitants; that said water so

furnished from the time said city first received and accepted the same up to the present date is, and has at all times been, the same character and supply of water as when first received and accepted by said city by said S. R. Bullock & Company; the said Vicksburg Water Supply Company and the said Vicksburg Water Works Company; and the pressure maintained has at all times been, and is now greater than required by said ordinance and contract.

12th. And there has never been any complaint during said period of about fourteen years as to the character or quality of the water, nor as to the pressure nor as to any other matter from the said city nor any official or other notice that said water works company was not complying in every respect in accordance with said ordinance. But after said city desired to own its own water works and it was ascertained by said city that your orator, The Vicksburg Water Works Company was the owner of said first mortgage bonds, and that by virtue of the sale under the said deed of trust it would become the owner of the said water works on the 8th day of August, 1900, said city without any notice to said water works company that said city claimed said company was not complying with the terms and provisions of said ordinance and contract arbitrarily, unjustly and illegally proceeded, as hereinafter set forth, to pass and adopt an ordinance and resolution, assuming to abrogate and take away the franchises and contract rights of your orator.

13th. Your orator further shows that the said city and its officers confederating and conspiring to injure and destroy the credit of the said Vicksburg Water Works Company and to destroy the value of its property assumed to abrogate and take away the franchises and contract rights of said company while denying its (said city's) liability to pay for the water used by it as provided in said contract and ordinance, and persistently and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price.

14th. Your orator further shows that the value of its property is in a large measure dependent upon its franchises and its contracts to supply said city with water, and that the value thereof is seriously impaired by the unjust and unlawful action of said city in assuming to abrogate and take away its franchises and contract rights as aforesaid.

15th. Your orator further shows that the said unlawful, unjust and illegal acts of said city and its officers are being done partly pursuant to an act of the legislature of Mississippi enacted on the 9th day of March, 1900, entitled "An act to authorize the mayor and board of aldermen of the city of Vicksburg, to issue bonds to the amount of $375,000, to purchase or construct, equip and maintain a water works system; construct and establish a sewerage system; to purchase ground for, erect and equip a city hall; construct
117 the necessary buildings for a hospital medical college and for other purposes." Said act is contained in Acts of 1900,

page 180, reference to which is hereby made, whereby said legislature assumed to annul and abrogate the aforesaid ordinance and contract said city entered into with said Bullock & Company and their assigns, in this that by reason of said ordinance and contract said city has no right within the period of thirty years to engage in the business of supplying water to the inhabitants of said city in competition with said Bullock & Company, or their assigns, notwithstanding which, said act authorizes and permits said city to construct and maintain water works for said purpose, if unable to buy the water works at the arbitrary and inadequate price fixed by said legislative act, and in pursuance of said act, and as required by its terms and conditions, an election was held in said city on the — day of —— 1900, at which it was voted by a majority of the votes cast at said election, that said city should issue its bonds in the sum of $150,000, to buy or construct water works for said city, all of which acts and doings on the part of said city and the legislature of Mississippi, impaired the credit of said Vicksburg Water Works Company and depreciated the value of its property, and tend to disable it from carrying on its business, and to coerce it to sell its property for such arbitrary and inadequate price and cast a cloud upon its title, franchises and rights; and said act, or ordinance and resolution and each of them are in contravention of the Constitution of the United States, in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns.

16th. Your orator further shows, as hereinbefore referred to, that on the 7th day of November, 1900, said city passed a resolution and ordinance assuming to abrogate and take away the franchises and contract rights of the said Vicksburg Water Works Company, a copy of which is hereto attached, marked Exhibit "I" and made a part hereof.

17th. Your orator further shows that if such act of March, 1900, and said resolution and ordinance adopted on said 7th day of November, 1900, as aforesaid, are permitted to stand, they will take away one of the most valuable assets of said Vicksburg Water Works Company, which will so materially impair its value as to wreck and ruin said water works in the hands of your orator, The Vicksburg Water Works Company.

18th. Your orator further shows that heretofore during the election to be held on the question of bonding the city for water works, sewerage, etc., as aforesaid, it was deemed admissible to have appointed an advisory board in conjunction with said mayor and aldermen of the city of Vicksburg, as to the wisdom of the expenditure of said bonds; that said advisory board and mayor and aldermen passed a resolution and gave a copy of same to your orator, requesting a reply. A copy of said resolution is hereto attached, marked Exhibit "J" and made a part hereof.

118 19th. Your orator further avers that the Vicksburg Water Works Company took possession of said water works on August 15th, 1900, and that the city election was held on December

6th, 1900, for city officers, and during the period between August 15th, and December 6th, 1900, many of the municipal office holders and seekers from the mayor of said city down dragged the water works into politics without the consent and wishes of your orator, and openly stated and published in the newspapers in the city, that if elected they would bring suit to cancel the contract with the water company, and charged that your orator had taken snap judgment on the city in buying said water works; copies of said publications are hereto attached marked Exhibits — and made a part hereof. All of which statements and publications were harmful and injurious to your orator, greatly hampering it in carrying on its business.

20th. Your orator alleges the fact to be that the incorporators of said Vicksburg Water Works Company commenced negotiations to buy the water plant in the fall of the year, 1899, and on January 5th, 1900, made a proposition in writing to buy the plant, which date was prior to the introduction of said act in the legislature, authorizing the city to buy or construct a water works system, and your orator never knew that the city had any desire whatever to own a water works plant of her own at the time of such negotiations.

21st. Your orator further shows that during said municipal election, rumors of damaging effect and that were utterly false began to travel the streets of defendant, the city, and were poured into the uninformed public ear, and met great favor with the newspapers of the city having a wide and influential circulation in said city, and through their columns the papers would themselves, and also by its citizens, some of whom were candidates for office, write inflammatory and untruthful articles about your orator, all of which has given birth to an unjust public disfavor and unrighteous prejudice which said rumors and articles have greatly injured your orator, and your orator is informed, believes and charges the fact to be that said rumors and articles were originated and circulated by officers, agents and confederates of said city, pursuant to said conspiracy and confederacy against your orator.

22nd. Your orator further shows that some time after the Vicksburg Water Works Company had bought the water works plant, and after it was well known that the city wanted the water works, or one of her own, one of the leading citizens of Vicksburg, for himself and associates offered to buy the waterworks from your orator at a price exceeding $150,000, and your orator charges the fact to be that this same citizen is today one of the advisory board, and that he is acting in that capacity with said board in conjunction with the mayor and aldermen to coerce and force your orator to sell said water works at a price less than what he himself and associates offered to pay your orator.

23rd. Your orator further shows that suit was commenced
119 by the city of Vicksburg in the chancery court of Warren county, Mississippi, to have declared void, said ordinance or contract your orator has with the city, at the instigation of said board of mayor and aldermen and said advisory board, and in about sixty days from the filing of said suit your orator received a communication from said associates of said leading citizen to know if

your orator now cared to sell the water works. Whether or not said leading citizen and associates are confederating in conjunction with said mayor & aldermen in said suit, your orator is unable to state. A petition for the removal of said suit to this court was filed by complainant herein because it involved a Federal question and the same is now pending in this court upon motion to remand, a copy of the bill of complaint is hereto attached and marked Exhibit "Y" and made a part hereof.

24th. Your orator further shows that on the 29th day of Feb'y, 1890, the defendant caused to be passed an act of the legislature of the State of Mississippi, entitled "To provide means for the construction of a sewerage system in the city of Vicksburg and to issue bonds therefor," which act will be found on page 507 of the sheet acts of said body, reference to which is hereby made, and this act has never been repealed by any subsequent legislation of Mississippi.

25th. On the 9th day of March, at the instance of the defendant, the legislature of the State of Mississippi, passed an act as aforesaid, entitled "An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of $375,000. to purchase or construct, equip and maintain a water works system," etc., while said contract and ordinance entered into with said defendant, the city, was still in force, and the conditions thereof being performed by both parties without complaint from either. Your orator charges that said act of March, 1900, is unconstitutional for many reasons, which will be shown to the court on the hearing of this cause, meaning as follows to-wit:

1st. Because it arbitrarily places the prices and value upon another's property, in which defendant has no interest.

2nd. Because the legislature of the State has by said act passed an *ex post facto* law impairing the obligations of a contract.

3rd. Because said act is in conflict with the act of 1890 page 507 providing for the construction of a sewerage system, because the act of 1900 does not in accordance with section — of the constitution of Mississippi repeal said act of 1890.

4th. Because said act of 1900 is local in character, when the provisions contained therein could be provided for by the general law.

5th. Because it abuses the credit of the city if these bonds are permitted to be issued and sold.

26th. Your orator would respectfully represent that about 1870, the defendant constructed a large underground gutter of about five feet in diameter on Washington street of defendant and through the most populous part thereof for about one half mile for the
120 purpose of conducting away the surface water of said defendant into the Mississippi river, and which was used for that purpose solely until afterwards as aforesaid in 1887 as aforesaid, the Vicksburg Water Supply Company as aforesaid, built its pumping station and intake pipe on the Mississippi river below the defendant which arranges the pumping station of your orator with reference to the mouth of this gutter so as to locate it about two miles up said river above said station. Some time after the Vicksburg Water Supply Company was put in operation, the citizens and inhabitants of

defendant along or near Washington street began to connect the water closets on their residences, hotels and stores with this gutter through the acquiescence and consent of defendant, to that extent until it has been converted into a partial sewer for said street for said water closets of said residences stores and hotels, and if defendant permits a general connection with this gutter for such purposes the sewerage thereof will pollute the waters of said river to that extent so as to make it unfit for domestic and drinking purposes as provided by said contract and ordinance with said city, and unless the use thereof is prohibited by defendant, your orator will be compelled to cut off and prevent the use of its water for such closets and sewer purposes by said residences, hotels and stores, in order that good and wholesome water may be delivered to said city and its inhabitants as is being now delivered.

27th. Your orator further charges that it has no adequate remedy at law for the damages which it has sustained by reason of the aforesaid conspiracy and unlawful acts of the defendant and others, and also that it has no remedy at law to enjoin and restrain a continuation by defendant of said unlawful actings and doings; and it charges that the continuance of said actings and doings will injure and damage your orator in the sum exceeding the amount of ten thousand dollars, and that the acts of defendant aforesaid have already damaged the complainant in its business in the sum exceeding said amount.

28. Your orator now especially shows that said ordinance or franchise Exhibit "B" provides that the defendant, the city shall pay to your orator semi annually to-wit: January 1st. and July 1st. of each year, the price or prices named in said ordinance for the fire hydrants as stipulated and set out therein.

29. Your orator especially complaining shows that the defendant the city, is now refusing to pay your orator the amount due and payable on January 1st, 1901, and only offers to pay an inadequate amount or price and under specific conditions, that if accepted by your orator would commit your orator to a false position with reference to its contract with the city; that the defendant, the city, by this scheme is confederating, conspiring and endeavoring to coerce your orator to commit an act whereby the ordinance would be annulled, notwithstanding the fact that defendant has already collected from the tax payers of defendant, the full amount with which to pay this demand.

121 30. Your orator further shows that we have, and did offer and now offer to the defendant, the city, in writing assuring the city that the payment for said fire hydrants due on January 1st, 1901, as stipulated in said ordinance should in no wise prejudice said city in a suit or suits whatever pertaining to this matter; your orator agreed to do this, that in this way your orator would be able to maintain itself and continue to furnish water for fire protection to said city, and that we were, and are now willing to do so, but your orator especially alleges that it cannot keep up the enormous expenses and pay fixed charges and maintain itself, and continue to

deliver water for fire protection etc., unless the defendant, the city pays for the water as received and used by it. A copy of the proposition made to water committee, city attorney and board of mayor & aldermen is hereto attached and marked Exhibit "K," and made a part hereof.

31. Your orator further shows that the water committee (after the bill was referred back to them, called a special meeting of the board of mayor & aldermen on Feb'y 7th, 1901 and made the following report, to-wit:

"To the honorable board of mayor & aldermen:

Report of a Committee of Water Works upon the Matter of the Accounts of the Vicksburg Water Works Company Referred to It.

GENTLEMEN: Your committee would respectfully report in reference to the above subject that they have fully considered the question of the accounts presented by said company. On the first day of October, 1900, the board of mayor & aldermen passed a resolution denying any liability to said company by virtue of the contract entered into with Samuel R. Bullock & Company, but for the use of hydrants they would pay a reasonable and just compensation. Our powers therefore in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary that we should go into any exact estimate of what is reasonable and just and therefore have proposed to said company that we will pay them from the 15th day of August, up to the day of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate of $50.00 per hydrant, which we consider a most liberal rate; it being understood however that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit; neither should these payments be deemed in any way a waiver of the rights of the city in the premises.

(Signed) D. A. CAMPBELL,
T. M. CAUGHLIN,
W. O. SMITH,
Committee."

122 32. Your orator would show that said board of mayor & aldermen received and adopted the water committee's report in words and figures as follows: "That the accounts be allowed on the basis and conditions of the committee's report." Your orator respectfully shows that said report of the water committee and the adoption of the same by the board of mayor & aldermen is so worded and hedged about that if your orator should accept the payment as stipulated therein, it would acknowledge thereby or break the contract, in this, the defendant, the city, reserving to itself all the rights in words and figures as follows: "It being understood however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the

termination of the pending suit, neither would this payment be deemed in any way the waiver of the rights of the city in the premises." But no rights are reserved to your orator, and therefore as before stated, if partial payment was accepted under the terms and conditions specified in said committee's report and mayor & aldermen's adoption, your orator would thereby be doing an act that could and would be construed the ending or breaking of the contract.

33. Your orator now shows that it cannot accept the proffered partial payment under the terms and conditions as specified in said water committee's report and mayor & aldermen's adoption, and that unless the defendant, the city, pays your orator, your orator will be unable to maintain itself and keep up the great expenses necessary to operate such a plant, discharge fixed charges as aforesaid, and while your orator is willing and anxious to furnish water for fire protection etc., and fully carry out said contract, and have offered so to do, and now offer so to do, but as before stated if defendant, the city, continues to refuse to pay for said water on a basis that each and all rights both for your orator and defendant, the city, may be equally and equitably reserved until this honorable court can decide the case on its merits, your orator will be unable to maintain itself and furnish water for fire protection etc.,

Wherefore, for as much as your orator can have no adequate relief at law but only in a court of equity, where matters of this sort are cognizable and relievable, and to the end that defendant may be required to answer, but not under oath (answer under oath being hereby expressly waived) each and all of the allegations hereinbefore stated, and may be required to desist the further infringement and invasion of your orator's lawful rights and may be decreed from constructing or acquiring and operating a system of water works in competition with your orator's water works, and to the end that your orator may have such other and further relief as unto your honors may seem proper, wherefore your orator prays;

I. That defendant may be compelled to answer the premises, (not under oath).

II. That the defendant may be enjoined, perpetually, from
123 assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business and to destroy its credit and the value of its property and coerce said complainant to sell its water works to defendant for an inadequate price, and that defendant may be enjoined and restrained from otherwise carrying on the unlawful conspiracy aforesaid entered into by it, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy, and that said act of the legislature of Mississippi, adopted on the 9th day of March, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900, be decreed to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and to be invalid and of no effect as against your orator.

III. May it please your honors to grant unto your orator a writ of injunction issuing out of this honorable court, under the seal thereof, directed to the defendant, its officers, attorneys and servants, and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy aforesaid entered into, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy as well as for a decree requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer.

IV. May it please your honors to grant unto your orator not only a writ of injunction, but furthermore a writ of *subpœna ad respondendum* directed to the defendant, namely The Board of Mayor & Aldermen of the City of Vicksburg (corporation as aforesaid); and thereby to command them upon a day certain therein named, to be and appear in this honorable court to answer the premises and to perform and abide by such further order of the court as to your honors may seem meet, to the end that your orator may have full and adequate relief in the premises.

V. Your orator would further pray for a decree against defendant, for all monies due it under said ordinance with 6 % interest per annum from the date of their respective maturities until it is paid.

VI. The premises considered, your orator therefore respectfully asks this honorable court for an injunction restraining defendant from perpetuating any minutes, or ordinances or resolutions of its own whereby it denies liability or seeks to annul or refuses to pay your orator contract price for water and that defendant be compelled to pay your orator for water used by them as per the ordinance price and to continue to do so until this cause is heard upon its merits and that the rights of all parties concerned may be preserved.

124 VII. May it please your honors to further grant to your orator such other and further relief as the facts aforesaid may demand, and as may be in conformity with equity and good conscience and in accord with the practice in this honorable court as a court of equity.

And your orator will ever pray etc.

VICKSBURG WATER WORKS COMPANY,
By S. S. HUDSON &
A. N. EDWARDS,
Its Solicitors.

STATE OF MISSISSIPPI,
Western Division of the Southern Judicial District of Mississippi, City of Vicksburg, ss:

M. O. Crumpler of lawful age being duly sworn on his oath says that he is secretary, treasurer and manager of Vicksburg Water

Works Company at the city of Vicksburg, Mississippi, and that the matters and facts stated in the foregoing bill of complaint of the Vicksburg Water Works Company are true, except as to such charges as are therein stated to be upon such information and belief; and as to those he believes the said charges so made to be true; and further affiant sayeth not.

(Signed) M. O. CRUMPLER.

Sworn to and subscribed before me, the undersigned, this 13th day of February, 1901.

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

EXHIBIT "A."

CITY HALL, *November 12th*, 1886.

A special meeting of the board of mayor and aldermen to further consider the proposition of the water works company, and to receive and entertain other proposition looking to the erection of a system of water works in our city was held on the above date.

Present: John W. Powell, mayor.

Aldermen, Kuhn, Ehrman, Rice, Anderson, Walsh, Baum and Crayton.

On motion of Alderman Baum, it was resolved that if any company or companies desiring to erect a system of water works in our city had a proposition to submit, said company or companies be requested to present their proposition.

After considerable discussion on the part of Major L. W. Magruder attorney for, and Mr. H. A. Hungerford agent for Samuel R. Bullock & Company of New York, Mr. Smedes, A. B. Pittman and Capt. Butts representing the Vicksburg Water Works Com-
125 pany, and Alderman Baum and other aldermen on the part of the board as to what would be the conditions — the proposition of Samuel R. Bullock & Company would be received; the Vicksburg Water Works Company and some members of the board claiming the right of said Vicksburg water works to submit another bid after the bid of Samuel R. Bullock had been received and opened, Major Magruder and Mr. Hungerford denying the right of said Vicksburg Water Works Company to submit another bid after the bid of Samuel R. Bullock & Company had been received.

On motion of Alderman Baum the resolution offered by him requesting any company or companies having bids to present for water works be requested to present them was reconsidered by the following vote:

Ayes.—Aldermen Kuhn, Ehrman, Rice and Baum.

Nays.—Walsh, Crayton and Anderson.

On motion it was resolved that the board invite bids for the construction of water works at its meeting on Monday night with the following vote:

Ayes.—Kuhn, Ehrman, Rice, Anderson, Walsh & Baum.

Nays.—Crayton.

JOHN W. POWELL, *Mayor.*

OFFICE OF BIRCHETT & GILLAND, Nov. 18th, 1886.

A special meeting of the board of mayor & aldermen to receive the report of the street committee on water works was held on the above date, present, Honorable John W. Powell, mayor, Aldermen Kuhn, Rice, Anderson, Walsh, Demarchi, Baum and Crayton, absent, Alderman Ehrman.

The street committee through its chairman, Alderman Baum, reported that after having considered the propositions of the Vicksburg Water Works Company and Samuel R. Bullock & Company of New York, they arrived at the conclusion that the latter proposition was the better of the two, and after conferring with Mr. Hungerford, agent of the said Samuel R. Bullock & Company making certain changes and modifications in the original proposition as submitted by the said S. R. Bullock & Company on November 15th, 1886, submitted as their final report an ordinance, entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works" which was read the first time and under a suspension of the rules, was read the second and third time by its title, and adopted with the following vote:

Ayes.—Aldermen, Kuhn, Rice, Anderson Walsh, Demarchi and Baum.

Nays.—Alderman Crayton.

126 On motion it was resolved that the thanks of this board are due and hereby tendered to the street committee for the able manner — which they have settled the question of water works.

* * * * * * *

(Signed) JOHN W. POWELL, *Mayor.*

EXHIBIT "B."

An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors, and assigns, for a supply of water for public use, and giving the said city of Vicksburg an option to purchase the said works.

Be it ordained by the mayor and aldermen of the city of Vicksburg.

SECTION 1. That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock and Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and

all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for the conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said Samuel R. Bullock & Company, their associates, successors and assigns shall exercise the greatest care and diligence in the use of the said streets, alleys, public squares and other public places and shall cause no unnecessary obstruction of or interruption to the public travel over or upon the same or any injury to or interference with any pipes, mains or sewers which may now be lawfully located beneath the surface thereof.

The said Samuel R. Bullock & Company, their successors, associates and assigns, shall take every precaution to provide against danger to property life and limb by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night and after the completion of the purpose for which the said streets, alleys, public squares and other public places may be used they shall be
127 restored to their former condition as near as may be without unnecessary delay, and they shall at their own cost and expense relay their mains and pipes when made necessary by a change of grade in any street ordered by the board of mayor & aldermen of said city if there was no established grade for such street at the time said mains and pipes were laid. On failure to restore such streets, alleys, public squares and other public places as aforesaid, the mayor and aldermen of the city of Vicksburg may on reasonable notice to them by any city officer, cause the same to be restored and recover the costs and expenses thereof from the said Samuel R. Bullock & Company, their associates, successors and assigns in any court having jurisdiction of the amount.

The said Samuel R. Bullock & Company, their associates, successors and assigns hereby agree to hold the mayor & aldermen of the city of Vicksburg harmless from any liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the said system of water works shall be as follows:

Mains.—The pipe system shall consist of not less than twelve (12) miles of mains of sizes varying from sixteen inches (16) to six (6) inches in diameter. The pipe used shall be of the best quality of cast iron pipe and each pipe shall be tested at its place of manufacture to a pressure of three hundred (300) pounds to the square inch. All pipe shall be coated with Dr. Angus Smith's preservative varnish and shall be laid and jointed by competent mechanics, and in the best possible manner.

The streets along which it and at what points said mains shall be

laid shall be first designated by the board of mayor & aldermen of the city of Vicksburg.

Hydrants.—The hydrants shall be double nozzle fire hydrants with nozzles fitted to connect with the hose couplings now in use by the fire department of said city of Vicksburg.

The board of mayor & aldermen of the city of Vicksburg shall within thirty days (3-) from the date of the final passage of this ordinance designate the points on the line of distributing mains at which the hydrants shall be erected.

Gates and valves.—All necessary gates and valves shall be provided and located at such points on the lines of mains as will enable certain district- to be cut off and isolated when repairs are needed without depriving other districts of their full supply.

Pumps.—The pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours against the pressure needed to supply all parts of the pipe system with an abundant supply of water. They shall be so arranged as to be operated separately or together.

Boilers.—The boilers shall be of ample capacity to operate the pumping engines and shall be so arranged as to be operated separately or together as may be required.

128 Stand pipe.—There shall be a stand pipe or a reservoir of sufficient capacity and height or elevation to furnish an ample supply of water for consumption at the highest points along the line of the mains.

Pump house.—The pumps and boiler house shall be a substantial stone or brick building of ample size for the pumps and batteries of boilers. The smoke stack will be of brick of the size needed to operate the boilers.

Source of supply.—The water shall be taken from such point as may be free from all sewerage, contamination, and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption.

Section 3. In consideration of the public benefit and the protection to property resulting from the construction of the said system of water works the mayor and aldermen of the city of Vicksburg hereby rent of the said Samuel R. Bullock & Company their associates, successors and assigns not less than eighty (80) double nozzle frost proof fire hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth days of January and July. After the first year of the operation of said water works the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five (65.) dollars payable as aforesaid and for the remainder of said period of thirty (30) years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or on the exten-

sions thereof as hereinafter provided at the request of the said mayor & aldermen of the city of Vicksburg shall be at the annual rate of fifty ($50.) dollars for each hydrant payable as aforesaid during the unexpired period of the said original term of thirty (30) years. Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters only provided that for fire practice and flushing sewers no more than two hydrants shall be opened at one time and not more than once in each week.

SECTION 4. Water shall be furnished free of charge to the public schools, and all other public buildings used exclusively for city purposes and for filling public cisterns and the city hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid to within seven hundred and fifty (750) feet of said hospital. And water shall also be supplied free for six (6) drinking fountains with openings for man and beast and one public fountain to be erected by said Samuel R. Bullock & Company in such place on the line of mains as the board of mayor & aldermen of the city of Vicksburg may direct.

SECTION 5. The said Samuel R. Bullock & Company, their
129 associates, successors or assigns may procure the organization of a water works corporation under the laws of any State and may asign to it all the rights and privileges acquired hereunder. Provided that such assignment shall not invalidate or effect the bond required by section seven (7) hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the repassage of this ordinance, in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

SECTION 6. Upon the completion of the construction of the said system of water works the said Samuel R. Bullock & Company their associates, successors and assigns shall notify the mayor and aldermen of the city of Vicksburg to that effect in writing and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw (4) fire streams through one hundred feet of two and one half inch hose and one inch nozzle and from four (4) different hydrants a stream not less than fifty (50) feet high at the highest elevation on which any of such hydrants are located. On the satisfactory performance of this test the said board of mayor and aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

SECTION 7. Within fifteen days after the day that this ordinance takes effect the said Samuel R. Bullock and Company, their associates, successors and assigns shall file their written acceptance thereof, binding themselves to its terms and obligations, in the office of the city clerk accompanied by their bond in the penal sum of ten thousand ($10,000) dollars with two or more sufficient sureties to

be approved by said board of mayor & aldermen executed to the mayor and aldermen of the city of Vicksburg and conditioned for the faithful compliance with the terms of this section. On failure to file such bond within said time this ordinance shall become null and void. But if said board shall not approve a bond so filed, said board may in its discretion grant additional reasonable time within which to file another bond.

The construction of the said system shall commence within sixty days after this ordinance takes effect, and said system shall be completed within eighteen (18) months after the commencement of the *construction* thereof *provided however* that the time during which the said Samuel R. Bullock & Company, their associates successors or assigns are delayed by floods, act of God or the public enemy, legal proceedings for the maintenance or defense of their legal rights or in the acquisition of property or right of way, or by reason of any other causes whatever beyond their control shall form no part of the time limited in this ordinance for the performance of any act required by the terms hereof to be done by them, but they shall use all due diligence to remove any such obstructions or delays.

SECTION 8. The said board of mayor and aldermen of the city of Vicksburg shall from time to time pass and enact ordinances under suitable penalties providing for the protection of the said works from damage, fraud or imposition.

SECTION 9. At the expiration of each period of ten years after this ordinance takes effect, the mayor and aldermen of the city of Vicksburg shall have the right and privilege to purchase the said system of water works provided they notify the said Samuel R. Bullock & Company, their associates, successors or assigns, of their intention to do so, at least one year before the expiration of the said period of ten (10) years.

The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their associates, successors or assigns and the board of mayor & aldermen of the city of Vicksburg shall severally appoint one person, the two appointees shall choose a third, and the three persons thus chosen, who, shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. None of the board shall be residents of the said Warren county. The said mayor and aldermen of the city of Vicksburg shall within sixty days after the said board *have* rendered its decision, pay the amount awarded in cash. A failure to so pay the award or to give notice of intention to purchase as above provided shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten (10) years.

SECTION 10. The said Samuel R. Bullock & Company, their associates, successors and assigns shall make extensions to their line of mains whenever called upon so to do by the mayor and aldermen of the city of Vicksburg. Provided, however, that said extensions shall be not less than 500 feet in length and that one public fire hydrant

shall be located on each five hundred feet or major portion thereof, and *further provided* that two thirds of the residents in the line of such extension shall agree to take water at the established rates for a period of at least two years, but the said Samuel R. Bullock and Company, their associates, successors and assigns may voluntarily make such extensions from time to time as they may deem necessary.

SECTION 11. After the works are put in operation, if at any time the pressure gauges located at the points hereinbefore named shall indicate a pressure of less than twenty (20) pounds on the distributing mains at the highest point of elevation for the period of two weeks in succession then the rental for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained, provided however, if the pressure indicated as aforesaid, shall be less than twenty pounds for two calendar months in succession then all the rights and privileges of the said Samuel R. Bullock & Com-
131 pany, their associates successors and assigns acquired by virtue of this ordinance shall at the option of said board of mayor and aldermen made in writing cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company, their associates, successors and assigns from temporarily shutting off the water from its said system or any portion thereof for the purpose of making repairs or extensions to the same; and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors or assigns for the suspension of the supply of water provided the repairs or extensions are made and the water turned on again without unnecessary delay. But the city shall not be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom.

SECTION 12. Be it further ordained, That as a part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Co., their associates, successors and assigns, the said water works and the property and business pertaining thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation, and all of the property and business pertaining to and employed in and about said system of water works, shall thereafter during each year of the balance of the period of this contract, be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars (50,000).

SECTION 13. The said Sam'l R. Bullock & Co., their associates, successors or assigns shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works and to make such rates and charges for the use of said water as they may determine, provided that said rates and charges shall not exceed fifty cents for each thousand gallons of water.

SECTION 14. Be it further ordained That for the purpose of paying

the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg which shall accrue to the said Sam'l R. Bullock & Company their associates successors or assigns by virtue of the terms and conditions of this ordinance, the mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually levy and cause to be collected upon the taxable property of said city a special tax, to be known and designated as the water works tax, sufficient to meet and pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations and liabilities shall be paid and discharged.

SECTION 15. Be it further ordained, That this ordinance shall take effect from and after its approval by the mayor.

Ordained this 18th day of November, 1886.

(Signed) H. J. TROWBRIDGE, *City Clerk.*

132 Approved this 19th day of November, 1886.

(Signed) JOHN W. POWELL, *Mayor.*

EXHIBIT "C."

Charter of Incorporation of the Vicksburg Water Supply Company.

Article I.

E. S. Butts, John B. Mattingly, L. W. Magruder, Clarence Delafield, and Chester R. McFarland, and such other persons as may become their associates and successors, are hereby created a body politic and corporate, by virtue of chapter XXXVIII, of the Revised Code of 1880 of the State of Mississippi, and the acts of the legislature of said State, amending and supplementing the same, under the name and style of "The Vicksburg Water Supply Company."

Article II.

The domicil and principal place of business of this corporation shall be the city of Vicksburg, in Warren county, Mississippi, but an additional or branch business office may be established and maintained in the city of New York, in the county and State of New York. Meetings of the board of directors may be held and this corporation may transact any of its business or affairs at either its principal place of business or at its branch office as aforesaid.

Article III.

The purposes for which this corporation is created are to construct, maintain and operate a system of waterworks to supply the city of Vicksburg, in Warren county, Mississippi, and the vicinity and the inhabitants thereof with an adequate supply of pure and wholesome water for all public and private uses.

Article IV.

The powers to be exercised by this corporation are as follows: To have perpetual succession; to determine the manner of calling and conducting meetings, to determine the number of shares that shall entitle its members to vote and the mode of voting by proxy; to elect all necessary officers and to prescribe their duties, salaries and tenure of office; to sue and be sued and prosecute and be prosecuted to judgment and satisfaction before any court of justice in the State; to have a corporate seal; to contract and be contracted with within the limits of its corporate powers; to make charges for supplying water and to collect payment therefor at such rates and upon such terms as may be agreed upon with consumers; to make all necessary by-laws not inconsistent with laws of Mississippi, to increase or diminish its capital stock from time
133 to time to any amount by vote of its stock holders, as hereinafter provided; to hold and own real and personal property to any amount and to sell, exchange and encumber the same; to borrow money and secure the payment of the same by a mortgage or deed of trust upon its property, revenues and franchises; to issue its bonds or other evidences of debt and secure the payment of the same by a mortgage or deed of trust upon its property, revenues and franchises; to sell, exchange, pledge or hypothecate such bonds or other evidences of debt.

This corporation shall also have the power of acquiring by purchase or otherwise an assignment to it of any contract which the city of Vicksburg may have heretofore entered into with any other persons to provide a supply of water to the city of Vicksburg and its inhabitants, and of succeeding to and exercising and enjoying all, and singular, the rights, powers, privileges, advantages, benefits, immunities, revenues and profits arising out of, or accruing from, such contract, which said city, by ordinance or otherwise, may have conferred and granted to such person or persons; and to have such other rights, powers and privileges as are necessary and proper to carry into execution the purposes of this organization, and as may now or hereafter be conferred by the laws of the State of Mississippi.

Article V.

The capital stock of this corporation shall be two hundred and fifty thousand dollars, divided into five thousand shares of the par value of fifty dollars each, which shall be paid in such installments, and in such manner as the board of directors may determine; and the said capital stock or any part thereof may be issued for money, or for property actually received by or labor or services actually rendered to this corporation on such terms as it may contract and deem necessary and proper for the transaction and conduct of the business and purposes for which it is incorporated; and when so issued, it is to be taken and deemed by all parties in interest as fully paid up at its face value, and subject to no further calls or assess-

ments whatever, and this corporation may issue and dispose of its bonds in like manner.

Each stock holder shall be entitled to a certificate under the seal of this corporation, and signed in its name by its president and countersigned by its treasurer, specifying the number of shares to which he may be entitled, which shall be transferable as now provided by law.

Article VI.

The business and affairs of this corporation shall be conducted by a board of directors consisting of five persons, a majority of whom shall constitute a quorum. The first board shall be elected as hereinafter provided and thereafter said board shall be elected by the stock holders from among their own number at their annual meeting as hereafter provided. The said board is hereby vested
134 with full power and authority to do all things necessary and requisite to carry into effect the purposes for which this corporation is created.

Within twenty days after its election, the said board shall meet in the city of Vicksburg, or in the city of New York, and elect one of their own number president, and shall appoint or elect a treasurer and secretary who may be directors and latter offices may be held by one and the same person, and such other officers, agents and employés as said board may deem expedient. The said officers and board of directors shall hold offices for one year, and until their successors are elected and qualified, and enter upon the performance of their duties, which shall be such as are ordinarily exercised by such officers, and as may from time to time be prescribed by the by-laws or the board of directors.

The annual meeting of the stock holders shall be held at the city of Vicksburg, Mississippi, on the *day* second Wednesday in the month of May in each and every year, commencing with the year 1888, between the hours of nine o'clock a. m., and four o'clock p. m., in pursuance of such notice as may be prescribed by the by-laws, and at such meeting the stock holders shall elect the board of directors for the ensuing year and transact such other business as may be lawfully brought before it. At all stock holders' meetings a majority of the votes of the stock holders present or by proxy shall govern, except as herein otherwise provided.

In case of a failure to hold the annual meeting on the day herein prescribed, the same may be held on such subsequent day as the by-laws or board of directors shall appoint, and the said annual meeting may be adjourned from time to time, and any business may be transacted at such subsequent or adjourned meeting as might have been transacted on the day fixed herein for the annual meeting.

The by-laws shall prescribe the time of holding and the mode of calling regular and special meetings of the board of *the board of* directors.

Article VII.

The corporators herein named shall meet in pursuance of a written notice to that end, designating the time and place of meeting signed

by any two of them and delivered to the others at least one day previous to such meeting, and when duly assembled, shall proceed to organize this corporation by the election of the first board of directors and for that purpose any three of said corporators shall constitute a quorum.

Article VIII.

The stock holders of this corporation shall not be individually liable for any debt, loss, damage or liability contracted or incurred by said corporation. But each stock holder shall be liable for the amount of balance that may be due for stock subscribed for by him, according to the statute in such case provided.

135 Article IX.

This charter shall not be altered or amended except by the assent of a majority of the stock holders, of this corporation expressed at any annual meeting or at a meeting called in pursuance of a notice stating the purpose of the meeting, signed by the owners of at least one third of the capital stock or by the president and secretary of this corporation on the written request of at least one third of the capital stock, and published at least once in each week for two consecutive weeks immediately preceding the date fixed for said meeting, in any newspaper of general circulation published in the city of Vicksburg, Mississippi, and the said assent certified to by the president and secretary of this corporation shall accompany the application for the proposed alteration or amendment.

In case any alteration or amendment is made to this charter a notice thereof directed to the stock holders of this corporation generally and clearly disclosing the nature of the alteration or amendment so made, shall be published once in each week for four successive weeks immediately following the date of the meeting at which the same was made, and such alterations or amendments shall be binding on all the stock holders unless those dissenting shall, within thirty days after knowledge that the same has been made, enjoin this corporation from acting under such alterations or amendments and if any stock holder or member shall fail to do so, he shall be estopped to deny the validity or binding effect thereof.

In testimony whereof, witness our signatures this the 1st day of February, A. D. 1887.

J. B. MATTINGLY.
E. S. BUTTS.
L. H. MAGRUDER.
CLARENCE DELAFIELD.
CHESTER R. McFARLAND.

Approval of Attorney General.

There is nothing in the within charter of incorporation violative of the constitution or laws of this State.

T. M. MILLER,
Attorney General.

EXHIBIT "D."

Know, all men by these presents, that, whereas the mayor and aldermen of the city of Vicksburg, State of Mississippi did on the 18th day of November, 1886, pass and enact a certain ordinance entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use,
136 giving the said city of Vicksburg an option to purchase the said works," which ordinance was thereafter on the 19th day of November 1886, duly approved as required by law.

And whereas under and by virtue of section 5 of the aforesaid ordinance the grantees thereof were empowered to procure the organization of a water works corporation with the right to assign to it all the rights and privileges acquired thereunder.

And whereas in pursuance of section 5 of the aforesaid ordinance the said grantees have procured the incorporation of the Vicksburg Water Supply Company under the laws of the State of Mississippi.

And whereas the terms and conditions of section 7 of the said ordinance as to acceptance of the said ordinance and filing of the penal bond as therein provided, has been duly complied with,

Now therefore know ye that for and in consideration of the sum of one dollar lawful money of the United States of America and other valuable considerations to us in hand paid by the Vicksburg Water Supply Company a corporation existing under and by virtue of the laws of Mississippi, the receipt of which is hereby duly acknowledged, we, said Samuel R. Bullock and William S. Mercer composing the firm of Samuel R. Bullock and Company, for ourselves, our personal representatives and assigns, have assigned, transferred and set over, and do by these presents, assign, transfer and set over unto the said Vicksburg Water Supply Company and its successors and assigns, all our right title and interest in and to the ordinance aforesaid, and all ordinances, resolutions and orders adopted subsequent to the aforesaid ordinance, and in any manner relating thereto, as fully and to all intents and purposes as if the said The Vicksburg Water Supply Company had been originally named as grantee therein.

In witness whereof, we have hereunto set our hands and seals this first day of March, 1887.

SAM'L R. BULLOCK.
WM. S. MERCER.

Sealed and delivered in the presence of
JAS. A. RYERSON.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that on this 16th day of March, in the year one thousand eight hundred and eighty seven before me the undersigned, Edwin F. Corey, a commissioner, resident in the city of New

York, duly commissioned and qualified by the executive authority, and under the laws of the State of Mississippi to take acknowledgments of deeds, &c., to be used or recorded therein, personally appeared the within named, Samuel R. Bullock and William S. Mercer, who acknowledged that they signed, sealed and delivered the foregoing instrument on the day and year therein mentioned as their act and deed.

137 In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

(Signed) EDWIN F. COREY,

[SEAL.] *Commissioner of the State of Mississippi.*

Office 60 Wall St., N. Y.

EXHIBIT "E."

Know, all men, by these presents: That whereas the mayor & aldermen of the city of Vicksburg did on the 18th day of November, 1886 pass certain ordinance entitled, "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates successors, and assigns for a supply of water for the public use, and giving the said city of Vicksburg an option to purchase the said works.

And whereas under and by virtue of section 5 of the said ordinance the grantees thereof were authorized to procure the organization of a water works corporation and to assign to it all the privileges acquired thereunder.

And whereas in pursuance of said authority the Vicksburg Water Supply Company has been incorporated under the laws of the State of Mississippi, and under and by virtue of a certain assignment bearing date March 1st, 1887, the said company has succeeded to all the rights and privileges acquired under the aforesaid ordinance by the said Samuel R. Bullock and Company.

And whereas it is provided by section 5 of the said ordinance that no assignment shall be valid unless the assignee shall accept the said ordinance in writing.

Now therefore be it known that the Vicksburg Water Supply Company for itself, its successors and assigns *have* accept- and by these presents accepted and agreed to become bound by the terms and obligations of the aforesaid ordinance.

In witness whereof the said company has caused this acceptance to be signed in its corporate name by its president and its corporate seal attached by the secretary to be hereto affixed this first day of March, 1887.

[SEAL.] (Signed) THE VICKSBURG WATER SUPPLY COMPANY,
By E. WOLTHAM, *President.*

Attest:
CHARLES M. BERRIAM, *Secretary.*

I hereby certify that the above and foregoing is a true and correct copy of the original acceptance of the Vicksburg Water Supply Company as the same appears of record now on file in my office.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

138 EXHIBIT "F."

At an adjourned regular meeting of the board of mayor & aldermen of the city of Vicksburg, held on the 18th day of May, 1887, the following action was had, to-wit:

"The written acceptance of the Vicksburg Water Supply Company accepting and binding themselves to the terms and obligations of the contract as accepted by Samuel R. Bullock & Company, was read and ordered recorded."

I hereby certify the above to be true and correct.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

EXHIBIT "G."

Whereas on the 8th day of August, 1900 at the Real Estate Exchange #111 Broadway, New York city, State of New York, under and by virtue of a deed of trust executed by the Vicksburg Water Supply Company of Vicksburg, Mississippi, to the Farmers Loan & Trust Company, trustee, recorded in Book — on page — of the records of deeds of Warren county, Mississippi, securing the payment of two hundred & fifty thousand dollars of bonds and interest thereon, there was sold under said deed of trust all of the property, real and personal belonging to the Vicksburg Water Supply Company located in Vicksburg, in Warren county, Mississippi, as well as elsewhere, and more particularly described as follows to-wit:

All of its real and personal property, goods and chattels now owned or which may be hereafter acquired by it, including its land water works, buildings, pump houses, reservoirs, machinery, pipes, mains, hydrants, apparatus, and equipments, situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, rents, issues, income, and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And, also, all the estate, right, title, interest, property, possession,

claim and demand whatsoever, as well in law as in equity of the water company of, in and to the property above described or hereafter acquired, and each and every part or parcel thereof with appurtenances, together with one certain written contract existing between the Vicksburg Water Supply Company and the board of mayor & aldermen of the city of Vicksburg, Mississippi, dated on the 18th day of November, 1886, and approved on the 19th day of November, 1886, for the rental of hydrants for the use of the public
139 for thirty years, which was assigned to the Vicksburg Water Supply Company by S. R. Bullock & Company, on the first day of March 1887, and notice being duly given by the Vicksburg Water Supply Company to said board of mayor & aldermen on the first day of March, 1887, of Bullock & Company's assignment of said contract to the Vicksburg Water Supply Company and of the Vicksburg Water Supply Company's acceptance of contract; whereupon the board of mayor & aldermen of the city of Vicksburg, Mississippi, accepted and approved said assignment on the 18th day of May, 1887.

Now therefore, at said sale as aforesaid, said Vicksburg Water Works Company of Vicksburg, Mississippi, purchased said property, contract, &c., as above described and set out,

Now therefore for the consideration of one dollar, cash in hand paid to the Vicksburg Water Supply Company, and for the further consideration of the benefit that the Vicksburg Water Supply Company have already derived through said contract and for the further purpose of showing good faith on our part to the purchaser thereof, the Vicksburg Water Supply Company, through its president, hereby conveys and quit-claims all of the right, title interest of every kind and nature whatsoever, it may have in and to the aforesaid property as above described, real and personal, or that it may now own, or may have owned or may hereafter acquire, including said contract with the board of mayor and aldermen aforesaid, situated in the city of Vicksburg, county of Warren, State of Mississippi, unto the Vicksburg Water Works Company of Vicksburg, Mississsippi.

In witness whereof, the Vicksburg Water Supply Company has caused these presents to be signed in its respective corporate name by its respective president, and its corporate seal attested by respective secretary, to be hereto affixed on the 18th day of October 1900. Revenue stamps having been affixed to deed from Farmers Loan and Trust Company to Vicksburg Water Works Company, we deem it unnecessary to affix the same hereto.

[SEAL.] (Signed) WHITNEY CONANT,
President of the Vicksburg Water Supply Company.

W. G. SNOW, *Secretary.*

STATE OF NEW YORK, *New York City and County, ss:*

Personally appeared before me Charles Edgar Mills, a duly authorized commissioner of deeds for the State of Mississippi, in New York, residing in New York, city and State, the within named

Whitney Conant, president of the Vicksburg Water Supply Company and W. G. Snow, secretary, who each acknowledged that they had signed, sealed and delivered the foregoing deed on the day and year therein mentioned to be the free and voluntary act and deed of the Vicksburg Water Supply Company for the uses and
140 purposes therein mentioned they being -hereto duly authorized. That the corporate seal attached is the corporate seal of said company and was duly affixed thereto by due authority.

Given under my hand and official seal this October 18th, 1900.

[SEAL.] (Signed) CHARLES EDGAR MILLS,
Commissioner for the State of Mississippi in New York and Notary Public for New York County and State.

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 10th day of December, 1900 at 9–10 o'clock a. m. and duly recorded in Deed Book 93 page 46*e et seq.*,

Witness my hand and seal of said court this 10th day of December, 1900.

(Signed) J. D. LAUGHLIN, *Clerk*,
[SEAL.] By J. L. HYLAND, *D. C.*

EXHIBIT "H."

To the honorable board of mayor and aldermen of Vicksburg, Mississippi.

GENTLEMEN: On the 18th day of September, 1900, I, as secretary of the Vicksburg Water Works Company notified you that it was the assignee and owner of a certain written contract entered into between Samuel R. Bullock & Company of the one part, and the board of mayor and aldermen of the city of Vicksburg of another part, approved and accepted on the 19th day of November 1886 by both parties, whereby Bullock and Company their associates, successors and assigns for certain considerations therein mentioned *is* to supply the city with water for public and private use but I withdrew the notification until the board of directors of the Vicksburg Water Works Company could officially meet and accept said contract and authorize me to give you notice, and the same having been done by the Vicksburg Water Works Company by resolutions by said board of directors, now therefore, this instrument in pursuance of their action and request in this behalf, is to inform you that the Vicksburg Water Works Company of Vicksburg, Mississippi is the owner of said contract and has been, since about the fifteenth day of August, 1900, and in accordance with its minutes by resolutions adopted by its board of directors it thereby accepted said contract and said ordinance and became bound by its terms, conditions and obligations in every respect as the assignee and owner of said con-

tract, and I as its secretary was instructed to give you said notice of its acceptance as above set out.

141 Witness its hand and seal of its secretary this 19th day of November, 1900, at Vicksburg, Mississippi.

(Signed) M. O. CRUMPLER.

I received a copy of said notice the 20th day of November, A. D. 1900.

(Signed) H. J. TROWBRIDGE,
City Clerk.

EXHIBIT "I."

At a regular meeting of the mayor and aldermen of the city of Vicksburg, Mississippi, held on the 7th day of November, 1900, amongst other proceedings had at said meeting, was the following to-wit:

Resolved, That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.

I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand and the seal of said city this 13th day of November, 1900.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk.

(Copy.)

EXHIBIT "J."

Resolved:—That the water works committee is instructed to notify the present owners of the Vicksburg Water Works Company, that the city of Vicksburg is authorized by law to purchase or build a water works system not to exceed in value $150,000 including all the expenses of engineering supervision etc., etc., and that said committee request the owners of said water works company to say whether or not they are willing to sell their plant, machinery and system complete to the city, and if yea, to name a price at which they will be willing to sell, and name a time within which the city shall have the option to purchase the same, giving the city authorities full time to investigate by competent engineers, the condition of the system as to repairs, and affording them ample opportunity to ascertain its present value, the answer to be presented in writing at an early day as possible for the action of this body.

142 EXHIBIT "K."

To the honorable board of mayor and aldermen of the city of Vicksburg:

When your petitioners purchased the water works of this city, it knew that its dependent source of revenue and support must come from its contracts with the city and citizens to supply the same with water as a protection against fire, private use, etc., and that it has been supplying said city and citizens with water for these purposes and faithfully in accordance with said contracts and with the understanding that the city would pay the contract price to petitioner as agreed, but notwithstanding this contract and faithful delivery, the city through you, is now refusing to carry out and pay the contract price to the petitioner as agreed upon for water received and used by you, but offers a wholly and inadequate price for said water so received and used.

Your petitioner shows aside from the legal obligations under this contract, the unjust proposition in offering to pay what you call a reasonable price for services rendered, in this, the city through its citizens are now only obligated to pay your petitioner under contract price $7,600.00 annually, while the city or its citizens are saving about $35,000.00 annually on insurance alone, caused or brought about solely by the water used by you, thereby leaving a net gain after paying $7,600.00 of over $25,000.00 annually to the city or her citizens which are one and the same, aside from the further benefits received by you free of charge, such as public fountains, schools, hospitals etc.

Your petitioner further shows that we are anxious and willing to keep up this constant supply of water and maintain the pressure thereof, but, should you reduce the present price or refuse to pay at all, it will simply be impossible for your petitioner to keep up its enormous expenses and maintain itself, and supply water because you know and realize that it is impossible for any concern to continuously run its business at a loss. With the present price which you are now obligated under said contract to pay for said water, it is almost impossible for your petitioner to operate and live. The water company has and did offer to the water committee and the attorn*ies* for the city that the water company would give the city assurance in writing that the payment for water received and used by the city at the contract price, should not in any way prejudice the city's suit against the water company.

The foregoing has the following endorsement, to-wit: No. 41. Vicksburg Water Works Company *vs.* Mayor and Aldermen of Vicksburg.—Bill of Complaint.—Filed Feb'y 16th, 1901, L. B. Moseley, clerk. C. D. Banks, D. C. No. 1. S. S. Hudson, attorney at law, Vicksburg, Miss.

143 EXHIBIT "X."

This indenture made the first day of March in the year 1887 between the Vicksburg Water Supply Company, a corporation created by and organized under the laws of Mississippi at the city of Vicksburg, party of the first part and hereinafter designated "the water company" and the Farmers Loan & Trust Company a corporation created by and organized under the laws of the State of New York, party of the second part, hereinafter designated "the trustee." Witnesseth:

Whereas the water company was incorporated for the purpose of conducting, maintaining and operating a system of water to supply the city of Vicksburg, Mississippi, and its inhabitants with water, and whereas in order to effect its corporate purposes the water company has determined to issue $250,000. of its coupon bonds in form as follows, and to secure the payment by mortgaging its property and franchises.

The Form of *Coupon.*

Number —. $1,000.00.

UNITED STATES OF AMERICA,
City of Vicksburg, State of Mississippi, County of Warren:

Vicksburg Water Supply Company. Vignette. First Mortgage Six per Cent. (6%) Thirty (30) Year Gold Bond.

Know all men by these presents, that the Vicksburg Water Supply Company is indebted to and hereby promises — Samuel R. Bullock & Company or bearer one thousand dollars ($1,000.00) in gold coin of the present weight and fineness lawful money of the United States of America at the office of the Farmers Loan & Trust Company in the city of New York on the first day of March, in the year 1917, with interest thereon at the rate of six per cent. (6%) per annum payable at the same place in like gold coin on the first day of March and September in each and every year until the majority hereof upon the presentation and surrender of the next coupon therefor as they respectively become due, free from all United States and municipal taxes levied or to be levied. This bond is one of a series of the two hundred and fifty (250) bonds of the like amount, tenure and date numbered from (1) to two hundred and fifty (250) both inclusive. Amounting in the aggregate to two hundred and fifty thousand dollars ($250,000), and is secured by an issue subject to the provision of the first mortgage or deed of trust therein of even date herewith conveying to the said Farmers Loan & Trust Company in trust for the benefit of the holders of the said series of bonds and the property and franchises of the said Vicksburg Water Supply Company now owned or hereafter to be ac-

144 quired by it and more particularly described therein. This bond shall not become valid until the certificate indorsed herein shall have been signed by the said trustee.

In witness whereof the said Vicksburg Water Supply Company has caused these presents to be signed by its president, attested by its secretary and its corporate seal to be hereto affixed, the first day of March, A. D. 1887.

VICKSBURG WATER SUPPLY COMPANY,
By —— ——, *President.*

Attest: —— ——, *Secretary.*

$30.00. *Form of Coupon.* $30.00.

The Vicksburg Water Supply Company hereby promises to pay to the bearer at the office of the Farmers Loan & Trust Company in the city of New York on its surrender -hereof thirty ($30.00) dollars in United States gold coin on the — day of —— 18— being six months' interest due on that day on its first mortgage six per cent. (6%) thirty year (30) gold bond.

—— ——, *Treasurer.*

Form of Trustee's Certificate.

Trustee's Certificate.

It is hereby certified that this bond is one of the series described and referred to in the mortgage or deed of trust within mentioned.

THE FARMERS LOAN & TRUST COMPANY,
—— ——, *Trustee,*
By —— ——, *Trustee.*

Now this indenture witnesseth that the water company to better secure the payment of the principal and interest of said bonds ratably and without discrimination or preference according to the true intent and meaning thereof and also for and in consideration of the sum of one ($1.00) dollar in money of the United States of America to it in hand paid by the trustee, a receipt of which is hereby acknowledged hath granted, bargained, sold, alien-, remised, released, conveyed and confirmed and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the trustee and its successors forever all of its real and personal property, goods, chattels now owned or which may be hereafter acquired by it including its land, rents, water works, buildings, pump houses, stand pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg, county of Warren State of Mississippi, together with all and singular the tenements,
145 hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversion-, remainder and remainders, tolls, rents, issues, income, and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and

can exercise or shall hereafter acquire or possess, and also all the estates, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the water company, of in and to the property above described and each and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above granted and described premises with the appurtenances unto the trustee and its successors forever.

In trust nevertheless and to and for the uses and purposes hereinafter expressed of and concerning the same for the equal pro rata, benefit and security of all who may become the lawful owners and holders of any of the bonds and coupons intended to be secured hereby without any provisions of priority of any bond over another by the name of priority in the time of issue or negligence or otherwise. And in order to carry out the purposes of this trust it is covenanted and agreed:

1st. Until default shall be made in the payment of the interest of said bonds according to their *tenure* or the terms of this instrument or in the payment to be made in the "sinking fund" as hereafter provided and as long as the condition and agreements herein contained shall be faithfully preserved the water company shall retain possession of the above granted and described property, and use, enjoy and operate the same and the leases, issues, incomes and profits thereof to take, have and apply to and for its sole use and benefit but in such manner as will not impair the security thereby created.

2nd. Should any default be made in the payment of the principal or interest of the aforesaid bonds according to their terms or the terms of this instrument and should the same remain unpaid and in arrear for the space of six months then upon the written request of the holders of at least one-fourth of the aforesaid bonds then owing and outstanding so to do and in proper indemnification being made against the costs and expenses to be incurred the trustee or its successors shall have the right by its agent, attorney or servants to enter into, upon and take possession of all and singular the property hereby conveyed or intended so to be, and to every part and portion thereof and have use and operate the same and exercise the privileges pertaining thereto and make such repairs and replacements or improvements as it may in its discretion deem necessary for the proper preservation and operation of the said mortgaged property and take collect and receive the earnings, income, liens, issues and profits of the same, and after deducting the expenses incident thereto including a reasonable compensation to the trustees and all taxes, rents or assessments due thereupon to apply the money so arising from the said mortgaged property to the payment in full of the interest coupons in default of said bonds in the order that
146 they may fall due and after paying such interest as shall be unpaid and in arrear to render the over-plus if any there be and surrender the mortgaged premises unto the water company or its successors to be managed by it as if such default had never taken place. Provided however that if the trustee shall take possession in case of default in the payment of the principal of the aforesaid bonds according to their terms or to the terms of the instrument or

if such default be made while the trustee is already in possession after the payment of the interest and other expenses as above provided as the same may *be* from time to time become due and payable, the trustee shall apply the residue of said money to the payment and extinguishment of the principal *to* the aforesaid bonds ratably and without discrimination or provisions and shall continue in possession of and shall operate and manage said mortaged property until the said principal is fully paid and satisfied, and after paying said principal and interest and other expenses in full shall render the over-plus and surrender the mortgaged premises and property unto the water company or its successors free of and released from the rent thereby created and provided further that in case of default in the payment of interest in the manner and period aforesaid if the holders or at least a majority of the bonds then owing and outstanding shall notify the water company and the trustee or their respective successors in writing before the interest so in default has been paid that they the said bond holders elect that the principal of all of the bonds secured hereby and then owing and outstanding become and be due and payable then upon such election being made and notice being given as aforesaid the principal of all of said bonds shall immediately become and be due and payable although the period therein limited for the payment thereof shall not then have expired.

3rd. If default shall be made in the payment of the principal or interest of the aforesaid bonds according to their terms *of* the terms *of the terms* of this instrument and should the same remain unpaid and in arrear for the space of six months then it shall be lawful for the trustee or its successors on being indemnified as aforesaid and upon a written request of the holders of a majority of the said bonds then owing and outstanding. So to do after entry as aforesaid or other entry or without entry to use or dispose of all the property and franchises of every kind and description hereby conveyed and of benefit and equity of redemption of the water company and its successors and assigns and of persons claiming under them in and to the same on publication to the highest bidder after a notice thereof to be published in one or more newspapers of general circulation printed in the city of Vicksburg, State of Mississippi and the city of New York, once each week for twelve successive weeks and on the day of sale and buy such *from* and other notices or requirements as may be necessary under the laws of the State of Mississippi. The sale to be held in the city of Vicksburg or in the city of New York, with the power to the trustee to adjourn the same from time to time at
147 its discretion by advertisement or announcement *at* the time and place of the proposed sale, and the attorney for the water company or its successor for that purpose by these presents authoriz-, constitute- and appoint-, to make execute and deliver to the purchaser or purchasers thereof a good and sufficient deed in fee simple or at the discretion of the trustee aforesaid, to foreclose and sell the equity of redemption to the water company or to other persons having a legal or equitable right or claims *or* in or to the mortgaged premises, or any portion thereof by proceeding in law or equity or in any court,

or tribunal of competent jurisdiction which sale so to be made in either of the modes herein described shall forever be a perpetual bar both in law and equity against the water company, its successors or assigns, and against all other persons claiming or to claim the said property or any part thereof, by from or under them or any of them, the water company hereby expressly waives the benefit and advantage of any and all valuation, *stayed* appraisement, redemption or extension laws, and all laws requiring a mortgage or other securities for money to be foreclosed for action therefor now in force and which may hereafter be in force under the laws of Mississippi.

4th. In case of a sale of the property hereinbefore mentioned in either of the modes here-before described the trustee shall apply the proceeds hereof after deducting the cost and expenses of said sale to the payment in full ratably and without discrimination for preference in case there is a deficiency of the principal of all of said bonds, then due and outstanding and the interest due thereon up to the time of such application *rating* the over plus if any there be unto the water company its successors or assigns.

5th. In the event of the sale under the terms of this mortgage it shall be lawful for any bond holder or bond holders or for the trustee on behalf of such of them as may unite in authorizing it so to do to purchase the property and franchises hereby conveyed and the bonds and coupons held by the purchaser, the bond holders shall receive in payment of the purchase money so obtained at said sale by them or by the trustee on their, behalf, the said sum paid in cash, equivalent to the amount which the purchase bond holders shall be entitled to out of the proceeds of such sale after *after* deducting all legitimate cost and expenses provided however that the purchasing bond holders so request- the trustee to purchase the said mortgage property on their behalf shall contribute in cash their portion *at* the expense of said sale or in case of a purchase by the trustee of this section the property and franchises shall be held by it in trust for the benefit of such bond holders only as may have authorized it to purchase on their behalf and free *for* the lien of these presents.

6th. If the water company shall well and truly pay or cause to be paid the principal and interest of the said bonds when the same shall become due and payable according to the tenure of said bonds and coupons thereto attached and shall comply with all other requirements hereof according to the true intent and meaning
148 of these presents then and in that event all of the estate, right, title, and interest of the trustee and its successors, in the trust hereby created shall cease, determine and be null and void, otherwise the same shall be and remain in full force and virtue.

7th. If at any time the trustee or its successors shall enter into and take possession of said property or the trustee to sell the same by reason of any default in the payment of any principal or interest or anything required to be done by the water company as herein provided the water company shall have the right at any time prior to the actual sale of said property to pay and satisfy in full the principal of said bond- and the interest thereon to the date of payment together with all just and proper cost, charges and expenses paid or incurred

by the trustee and a reasonable compensation for its services and upon such payment and satisfaction the trustee shall surrender to the water company all of said property hereby granted and shall execute and deliver to the water company such instrument as the water company may deem necessary and discharge these presents and records and to revest in it the title to said property and franchises.

8th. The water company and its successors and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in and to the hereinbefore granted property put there under or in trust for them shall and will at any time and times hereafter upon reasonable request of the trustee or its successors buy — at the proper cost and charges in the law, of the water company its successors or assigns, made, do and execute, or cause or procure to be made, done or executed all and every such further and other lawful and reasonable, conveyance and assurance in the law for the better and more effectual vesting and confirming the property and franchises hereby granted or intended so to be and especially such property and franchises as shall be hereafter acquired in and to the trustee or its successors forever in trust as aforesaid as by the trustee or its successors, or their *concern*, learned in the law shall be reasonable devised, advised or required.

9th. Should the trustee herein named resign, or for any reason whatever become incapacitated from acting under these terms it shall be lawful for the holders of the majority of the bonds then owing and outstanding, intended to be secured hereby to nominate by an instrument in writing executed under their hands and seals acknowledged in like manner, and the deed to be recorded in the State of Mississippi, such persons or corporation to act in the premises instead of such out going trustee as they shall deem fit and upon a written acceptance of such persons or corporation so nominated and appointed to be made and executed in like manner and deliver- to the water company he or it shall become vested with the same estate, rights, powers and liabilities as if he or it had been expressly named as the trustee herein and thereupon all of the estate, right, title and interest of the outgoing trustee shall be divested, ceased and determine and be null and void.

149 10th. In any case herein provided which the trustee shall have the right to enter upon the said mortgaged premises or to do any other act to enforce any provision hereof the holder or holders of the majority of the outstanding bonds may by written instrument sign from time to time, instruct and require the trustee to waive, discontinue and defer the exercise of such right, absolutely or upon such terms as such majority may deem proper or as such majority may reverse or annul, the power of the trustee already exercised but the exercise of the aforesaid power of the trustee or the majority of the bond holders in case of one default shall in no wise affect their respective rights in case of a subsequent default.

11th. The trustee accepts the trust hereby created and its duties upon the following terms which are expressly agreed to, the recitals herein contained and made on behalf of the water company and not of the trustee.

The trustee shall be responsible only for its willful negligence or default and not for the act or default of any agent, attorney, or employee selected with reasonable discretion.

The trustee shall resign upon a notice to the water company of sixty days or upon shorter notice as the water company may accept as sufficient. The trustee shall not be bound to take any action toward the enforcement of any provision of this mortgage not to appear in or defend any suit or proceeding brought against it as such trustee unless previously indemnified to its reasonable satisfaction against all cost, claim, suits or liabilities incident to or which may result from such action or default nor to recognize any person as the holder of any of said bonds nor to take any action at his request even if indemnified as above provided, unless his bonds are submitted to the trustee for inspection and his ownership to the said bonds satisfactorily proved if disputed.

The trustee shall not be bound to record or file this mortgage or take any steps to make it a lien upon personal property or to renew or perpetuate, nor to insure the mortgage property.

The trustee shall have reasonable compensation for its services and be reimbursed for all of its proper expenses in executing the trust hereby created and such compensation and expenses shall be *at* first *charged* upon the trustee's estate and fees.

12th. The holder or holders of any of the said bonds or coupons secured hereby shall not have the right to institute suit or proceedings to enforce any provisions herein contained, unless the trustee shall refuse or neglect to institute the same after a written request from any bond holder or bond holders and at a reasonable opportunity so to do and the tender or receipt of a reasonable indemnity against the cost and expenses of said suit, or proceeding, by such written request and tender or receipt of a reasonable indemnity shall be a condition precedent to the commencement of any suit or proceeding by any bond holder.

In witness whereof the Vicksburg Water Supply Company
150 and the Farmers Loan & Trust Company, have caused these presents to be signed in their respective corporate names by their respective presidents and their corporate seals attested by their respective secretaries, to be hereto affixed the day and year first above written.

VICKSBURG WATER SUPPLY COMPANY,
By E. WALTMAN, *President.*

Attest:
CHARLES M. BERREAN, *Secretary.*
[SEAL.]

FARMERS LOAN & TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest:
WILLIAM H. LEUPP, *Secretary.*
[SEAL.]

STATE OF NEW YORK, *City and County of New York:*

Be it remembered that on this the third day of March, in the year 1887, before me the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and *in* the laws of the State of Mississippi, to take acknowledgments of deeds etc., to be used and recorded therein, personally appeared E. Waltman, president, and Charles M. Berrean, secretary of the within named Vicksburg Water Supply Company who severally acknowledged that they signed the within and foregoing instrument as such president and secretary, sealed the same with the corporate seal of said company and delivered the same as the act and deed of said company on the day and year therein mentioned. And E. Waltman of the said company being by me duly sworn did depose and say that he resides in the city of New York, *with* the seal affixed to the seal of the foregoing instrument *as* the corporate seal of the Vicksburg Water Supply Company and was thereto affixed by the authority of said company and that he as president together with Charles M. Berrean, as secretary subscribed their names thereto by like authority.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

E. F. COREY,
Commissioner for the State of Mississippi.

Office 60 Wall St., N. Y.

STATE OF NEW YORK, *City and County of New York:*

Be it remembered that on this the fifth day of March in the year 1887, before me the undersigned Edwin F. Corey, a commissioner duly commissioned and qualified by the executive authority
151 and under the laws of the State of Mississippi to take acknowledgments of deeds etc., to be used and *are* recorded therein, personally appeared Roswell G. Robertson, president and William H. Leupp, secretary, of the within named Farmers Loan & Trust Company, who severally acknowledged that they signed the within named and foregoing instrument as such president and secretary sealed the same with the corporate seal of said company and delivered the same as the act and deed of said company on the day and year therein mentioned, and the said Roswell G. Robinson of the said Farmers Loan and Trust Company being by me duly sworn did depose and say that he resides in the city of New York that the seal affixed to the foregoing instrument is the corporate seal of the said Farmers Loan & Trust Company and was thereto affixed by the authority of said company and that he as president with William H. Leupp, as secretary, subscribed their names thereto by like authority.

In witness *t*hereof I have hereto set my hand and affixed my official seal, the day and year last aforesaid written.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Mississippi.

Office 60 Wall St. N. Y.

STATE OF MISSISSIPPI, *County of Warren:*

I George T. Hardy, clerk of the chancery court of said county hereby certify that the foregoing instrument was filed in my office on the 10th day of March, 1887, at 12.45 o'clock p. m. and duly recorded in Deed Book Number 63 pages 48 to 57, inclusive.

Witness my hand and seal of court this 11th day of March, 1887.

[SEAL.] GEORGE T. HARDY, *Clerk.*

EXHIBIT "Y."

STATE OF MISSISSIPPI, *County of Warren:*

In the Chancery Court.

To the Honorable W. C. Martin, Chancellor:

The Mayor & Aldermen of the City of Vicksburg a municipal corporation under the laws of the State complainants exhibit this their bill of complaint against The Vicksburg Water Supply Company and The Vicksburg Water Works Company, corporations under the laws of the State of Mississippi and domiciled in the said city of Vicksburg defendants and respectfully shows:—

152 That on the 18th day of November, 1886 the said complainants in their said official capacity adopted an ordinance whereby a contract was entered into with certain persons doing business under the firm name and style and designated as Samuel R. Bullock & Company their associates, successors and assigns for a supply of water for public use:

That a copy of said ordinance is hereto annexed as Exhibit "A" and made a part of this bill.

It is provided in section (1) that in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains, and other conduits and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good, wholesome water to the city of Vicksburg, Miss., and its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force: and further said section makes provision that the said Samuel R. Bullock & Company should exercise proper care and diligence in and about the construction of said works.

That by section 2 the general plan of said system of water works

is defined including specifications as to mains, hydrants, gates and valves, pumps, boilers, stand-pipe, pump house and also as to the source of the supply of water.

It is specially provided under the head of pumps that the pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours, against the pressure needed to supply all parts of the pipe system with an abundant supply of water.

They shall be so arranged as to be operated separately or together.

By said section the source of supply and character of water was specially designated in words as follows:—The water shall be taken from such point as may be free from all sewerage contamination, and shall be good wholesome water, for all purposes of domestic and manufacturing consumption.

By section three provision was made for compensation to the said Samuel R. Bullock & Company as follows:—In consideration of the public benefit and the protection to property resulting from the construction of said system of water works, the mayor & aldermen of the city of Vicksburg hereby rents of the said Samuel R. Bullock & Company, their associates successors and assigns, not less
153 than eighty (80) double nozzle, frost proof, fire hydrants for the aforesaid period of thirty (30) years, at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth day of January and July. After the first year of the operation of said water works, the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred hydrants shall be located on the original twelve (12) miles of mains, at said annual rental of sixty-five dollars, payable as aforesaid, and for the remainder of said period of thirty years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of one hundred (100) hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg shall be at the annual rate of fifty dollars (50) for each hydrant, payable as aforesaid during the unexpired period of the original term of thirty (30) years * * *

By section — it is provided that the said Samuel R. Bullock & Company should supply and provide with water free of charge six drinking fountains with openings for man and beast at such places as the board of mayor and aldermen of said city might designate.

By section — it is provided as follows:—The said Samuel R. Bullock & Company, their associates, successors and assigns, may procure the organization of a water works corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder, provided, that such assignment shall not invalidate or affect the bond required by section seven (7) hereof, and no assignment hereof shall be valid, unless such assignee shall, in writing to the said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of

mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the repassage of this ordinance in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

By section eleven it is provided that a pressure of not less than twenty pounds on distributing mains shall be maintained at the highest point of elevation; and it is further provided if the pressure should be less than twenty pounds in two calendar months in succession then all of the rights and privileges of the said Samuel R. Bullock — their associates, successors and assigns acquired by virtue of this ordinance shall at the option of the board of mayor & aldermen made in writing cease and determine * * *

It is provided in section twelve for a part of a consideration of the contract that the property and business of said water works shall be exempt from municipal taxation for the first five years of their operation and thereafter during the period of said contract all of said property and the business shall be assessed for taxation
154 for said city at a valuation not to exceed fifty thousand dollars.

That by section fourteen of said act it is provided that for the purpose of paying the obligations of the said mayor & aldermen accruing to the said Samuel R. Bullock and Company, their associates, successors and assigns under said contract the said mayor and aldermen shall annually levy and cause to be collected upon all the taxable property of said city a special tax to be known as the water works tax sufficient to pay said obligations during the continuance of the contract and until all of said obligations shall be paid and discharged.

Complainants further show that in pursuance of said contract the said Samuel R. Bullock and Company proceeded to construct and erect a system of water works in said city and that afterwards to-wit; on the — day of —— the said works were accepted by the said mayor and aldermen:

That thereafter the said Samuel R. Bullock & Company procured the organization of The Vicksburg Water Supply Company one of the said defendants, as a corporation under the laws of the State of Mississippi and by virtue of said section five assigned to said corporation said contract and afterwards on the — day of —— the said Vicksburg Water Supply — in writing accepted said ordinance and thereupon the said board of mayor and aldermen formally approved said assignment.

That the said Vicksburg Water Supply Company operated and owned said works from said date to the 15th day of August, 1900, and was actually paid the compensation fixed by said contract for the use of its hydrants aggregating the sum of about eight thousand dollars ($8000) per annum.

That on the first day of March 1887 the said Vicksburg Water Supply Company for the purpose of securing two hundred and fifty thousand dollars (250,000) of bonds executed a deed of trust upon all its property situated in the county of Warren and State of Missis-

sippi, and described in said deed of trust as follows:—All its real and personal property goods and chattles now owned or which may hereafter be acquired by it including its land, water works, buildings, pump house, stand pipe, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipment situated in the county of Warren, State of Mississippi, together with all and singular the tenements (hereditaments) thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, tolls, rents issues income and profits accruing therefrom also all and singular the corporate franchises, privileges, rights and liberties which the water company now hath and can exercise or shall hereafter exercise or shall hereafter acquire and possess and also all the estate right title, interest property possession claim demand whatsoever as well in law as in equity of the water company of, in and to the property above described and each and every part and parcel thereof with the appurtenances.

155 That sometime in March, 1900 the said First national bank sold all of said mortgage bonds to certain persons to-wit: M. O. Crumpler and others in consideration of twenty-five thousand — ($25,000) cash and the further sum of one hundred and twenty-five thousand dollars (125,000) in certain mortgage bonds to be thereafter issued upon the said property.

That it was also agreed between said parties that the deed of trust above mentioned should be foreclosed in accordance with its terms default having been made by said company as to its obligations under said deed of trust.

That a sale of said property was afterwards made on the 15th day of August 1900 in the city of New York by the trustees under said deed of trust at which the property above described was sold to the said M. O. Crumpler and others which said property was afterwards by said Crumpler and others conveyed to the defendant the said Vicksburg Water Works Company.

Complainants further show that the contract entered into with Samuel R. Bullock & Company on the 18th day of November 1886, is null and void and the attempt by said mayor & aldermen to make such contract was a gross abuse of their rights and powers.

That the said mayor and aldermen had no right to make a contract for so long a time as thirty years and beyond the life of their official terms to bind constituted authorities of said city to pay rents for the said hydrants as therein stipulated:

That whatever may have been at the time a reasonable and just compensation to be paid to said water company for said hydrants such payment is now an excessive and unjust charge and an extortionate burden upon the tax-payers of said city.

Complainants show that the cost to construct a system of works like that at present operated at Vicksburg and owned by said defendant's water works company can be built, in every respect as good, for a sum not exceeding one hundred and thirty thousand dollars ($130,000). The present income of said water works including their claim against the city for annual rentals of said hydrants (amount- in the aggregate to thirty thousand dollars

($30,000) per annum and that the expenses of every kind including improvements and betterments would not exceed an annual outlay of fifteen thousand dollars ($15,000) which would be a net return of ten per cent. upon an investment of one hundred and fifty thousand dollars ($150,000) and that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal and said board *exceed* its power and authority in making a contract stipulating for the period aforesaid said rates.

Complainants further show that — the 25th section of the charter of the city of Vicksburg which was in force at the time of making said contract it is provided that the said mayor and aldermen shall not make any contract involving an expenditure of corporation funds, relating to work on public streets, or the erection, extension or repair of public buildings, where the cost of the proposed work shall exceed five hundred dollars, or for material to be furnished exceeding two hundred dollars in value, except upon advertisement duly made for sealed proposals to do such work.

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Nevertheless said mayor and aldermen entered into said contract whereby said terms were imposed upon said city for the period without any advertisement for sealed proposals as provided by law by reason wher-of said contract was unauthorized and is illegal and void.

Complainants further show that the said mayor and aldermen had no right to make provisions as was attempted to be done by the 14th section of said contract to make an annual levy of a special tax to be known as the water works tax to pay the obligation of said city accruing under said contract.

Complainants further show that by the terms of the first section the said mayor and aldermen attempted to grant and did grant unto the said Samuel R. Bullock & Company the exclusive right and privilege for the period of thirty years of erecting maintaining and operating a system of water works within the corporate limits of the city of Vicksburg and for the exclusive use of the streets, alleys, public squares of said city for that purpose, for the purpose of supplying water to the city of Vicksburg and its inhabitants for public and private use.

That the said mayor and aldermen had no right or power to make such contract; that an exclusive grant or monopoly of the kind is in contravention of the public policy of the State and is illegal and void.

That it is provided by section two of said contract that the pumping plant should consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four hours.

Complainants aver and charge the fact to be that neither the Vicksburg Water Supply Company nor the Vicksburg Water Works Company have ever complied with the provisions of this section.

That in constructing said works originally the pumps were connected with the Mississippi river for a water supply but that the contrivance for that connection afterwards failed and the pumping of

the water since 1889 from the supply has been made by pumps of inferior and unequal capacity to do the work required by said contract.

That said inferior pumps are used to take the water from the Mississippi river and to fill up a basin from which it is again pumped into the mains, by reason whereof said mayor and aldermen are entitled to have said contract annulled.

Complainants further show that the Vicksburg Water Supply Company and the Vicksburg Water Works Company have failed to provide for public and private use good and wholesome water.

That particularly since the 15th day of August, 1900 said Vicksburg Water Works Company have continuously from day to
157 day and are now furnishing water which is not good or wholesome: that the water which has been provided from day to day by said company is wholly unfit for use and deleterious to health and that it is not even fit for ordinary bathing purposes.

That notwithstanding public and other complaints to the contrary said company has persistently, negligently, wilfully and unlawfully disregarded its obligations to said city in this regard, by reason whereof the said mayor and aldermen now claim the right to have said contract annulled.

That the purpose for which said works were constructed and organized was to provide not only the said city with fire protection but also its citizens with a supply of good and wholesome water for domestic use:

That such object and purpose has wholly failed by reason of the negligence and disregard of its duties by said water works company in that regard.

Complainants further show and charge that the action of the said mayor and aldermen which undertook according to the provisions of section 12 of said contract to exempt the property and business of said water works from municipal taxation for five years and afterwards provide that the assessment of the said property should not exceed the sum of fifty thousand dollars ($50,000) was an abuse of the powers of said mayor and aldermen, whereby an unjust burden was imposed upon the tax payers of said city.

That said board had no right to make any exemption from taxation of said property and had no right to provide by contract for said assessment at fifty thousand dollars ($50,000) and the action of said board in this regard is illegal and void and said contract is in consequence a nullity.

Complainants further charge that the Vicksburg Water Works Company have negligently failed and refused to comply with the obligations imposed upon it by section eleven of said contract, wherein there is required a pressure of not less than twenty pounds shall be maintained upon the distributing mains at the point of their highest elevation.

That by said section it is further provided that if the pressure shall be less than twenty pounds for two calendar months in succession then all the rights conferred by said contract shall at the

option of said mayor and aldermen made in writing cease and determine.

Complainants charge that the said Vicksburg Water Works Company have negligently failed for more than two calendar months to maintain said pressure at said elevation and the board of mayor and aldermen do now exercise their option and do now declare that the rights and privileges conferred by said contract shall cease and determine.

Complainants further show that the said board of mayor and aldermen at a meeting held on the 5th day of Nov. *it was* resolved and declared that the said board no longer recognized any
158 liability under said contract to said company, by reason whereof said complainants say that said contract no longer exists.

Complainants further show that by the terms of section seven a bond was required to be executed by the said Samuel R. Bullock and Company for the faithful performance of the conditions of said contract and by section five the right was given to the said Samuel R. Bullock & Company to procure the organization of a water works company, authorizing assignment to it of all rights acquired under said contract: It was further provided that no assignment of the contract should be valid unless in writing, the assignee should accept the ordinance:

That by the terms of these sections it was contemplated that there should be no assignment of said contract except to a company organized by Samuel R. Bullock and Company and made in pursuance of said provisions:

Complainants now show that the said Vicksburg Water Works Company have never acquired by assignment or otherwise said contract or any rights thereunder:

Complainants show that the matters hereinbefore set forth in respect of the sale to M. O. Crumpler and others of the mortgage bonds issued by the Vicksburg Water Works Company and a foreclosure under the deed of trust securing the same are now made upon information and belief.

The mayor of this city on or about the — day of October 1900 addressed a formal communication to the Vicksburg Water Works Company requesting that it should inform the constituted authorities of said city of the muniments of its title and the right by which it claims to be the assignee of said contract. A copy of said letter is hereto annexed marked Exhibit "B" and made a part of this bill.

The said water works company have refused and still refuse to give to the said mayor and aldermen of said city any information in the premises.

That they have not been informed and do not know anything concerning the alleged rights of the said Vicksburg Water Works Company in the premises further than its own declaration that it claims to own the water works plant situated in this city and claims the right to assert the rights and privileges granted to Samuel R. Bullock & Company under said contract:

Complainants now deny that the said Vicksburg Water Works Company or the said M. O. Crumpler or any one else have ever acquired any right whatever accruing under said contract:

Complainants further show that the Vicksburg Water Supply Company is a defunct organization and is entirely without assets or business and has ceased to be a going concern: they are informed that all of its property and other assets were on the 15th day of August 1900 sold under said deed of trust:

That since the 15th day of August, 1900, it has not complied with any of the terms of said contract:

159 That it had no means or agencies whereby to carry out the obligations assumed by it under said contract:

That by the terms and spirit of said contract its obligation was a continuous one from day to day to provide said city and its inhabitants with water in a sufficient supply for their needs:

That as between said Vicksburg Water Supply Company and the city of Vicksburg said contract has become and is void and a nullity:

That when it permitted itself to become permanently disabled from performing the obligations of said contract and when it became utterly insolvent and bankrupt without any means or assets or without any organization as a corporation, said contract thereupon and thereby became dissolved and became a nullity:

That one, Chester R. McFarland who was formerly superintendent of the Vicksburg Water Supply Company has been nominally continued in said office to the 1st day of January 1901.

Wherefore complainants say that they are entitled as against the Vicksburg Water Supply Company to have said contract declared as having been dissolved and as being without force and effect.

Complainants further show that said mayor and aldermen were authorized and empowered by virtue of an act of the legislature approved on the — day of February 1900 to construct or cause to be constructed a system of sewerage in the city of Vicksburg at a cost not to exceed the sum of one hundred and fifty thousand dollars ($150,000);

That the health and the welfare of the inhabitants of said city demand that a system of sewerage should be constructed; that the growth and extent of its population are such as imperatively require as a condition precedent to the construction of said sewerage that said mayor and aldermen should first acquire and own a system of water works either by purchase or construction: It was manifestly contemplated by said law and by the constituted authorities of said city that said water works then owned by the said water works company might be acquired upon reasonable terms of compensation, nevertheless under the alleged contract the said water works company claims the right to demand from the city the sum of eight thousand dollars a year during the unexpired term of said contract, to-wit until the 19th day of November, 1916:

That since the passage of said act the said Vicksburg Water Works Company have acquired possession of said plant and are now assert-

ing that they have succeeded to the rights of the contract made with Samuel R. Bullock & Company as aforesaid.

That under the circumstances no reasonable terms can be made between the said Vicksburg Water Works Company and said city for the purchase of said works:

That if said works were new they would not cost above the sum of one hundred and thirty thousand dollars ($130,000):

That the present plant is now about fourteen years old and has depreciated in value and efficiency accordingly:

160 That the present method by which water is taken from the Mississippi river and the present character of the water are such that they could not be tolerated, by the said mayor and aldermen, in case is should acquire a system of its own:

That any system which would be acquired by said city and operated for the benefit of its people would be a gross imposition upon its inhabitants and a gross dereliction of the official duties of said board if it did not provide for a supply of good and wholesome water:

That it would cost the sum of not less than fifty thousand dollars to change and improve the present water works plant in such a way as to make said plant efficient and satisfactory:

That the said Vicksburg Water Works Company will not yield its contention that it possesses a subsisting contract with said city whereby it is entitled to claim an annual payment of eight thousand dollars ($8,000) for the next sixteen years.

That in fact this pretended claim constitutes the most valuable of the alleged assets of said company: That without it said plant and all of its property and business would not be worth the sum of one hundred thousand dollars ($100,000):

Complainants further show that the imperative duty imposed upon said mayor and aldermen by said law to make provisions for said sewerage plant, and to that end to acquire a system of water works is embarrassed and obstructed by the pretended claim of said Vicksburg Water Works Company as aforesaid.

That the said mayor and aldermen would not be warranted in exercising its rights to build a new system if it be true that they are bound to said water works company by contract requiring a payment for the rental of the present works at eight thousand dollars per year for the next sixteen years:

That it would be a dereliction of public duty on the part of the mayor and aldermen and a gross disregard of their obligations to admit the contention of the said water works company that they are bound to it by the terms of said contract as a basis for the purchase of said plant.

That the said defendant, the said Vicksburg Water Works Company have unjustly and illegally embarrassed and obstructed the said mayor and aldermen in and about their duties as aforesaid and continue to persist and so obstruct them by said pretended and alleged claim.

Complainants aver that it is the duty of said mayor and aldermen to cause to be promptly determined the question of their liabil-

ity under said contract to the said Vicksburg Water Works Company:

That they owe it to the citizens and tax payers of said city to secure for them such public utilities as a water works plant and a sewerage system upon the most economical and best terms.

That they should be free to act for the best interest of said city in the premises and rid of their alleged liability to said company.

161 That they are entitled to have ascertained and determined whether or not the said city is legally bound by said contract: that if it shall be determined that they are so bound, they should be free to exercise their description, and await the convening of the next legislature for authority to build said sewerage system, without the condition precedent that they should own the water works plant:

That the public interest and the public welfare require that there should be speedily determined the question of their said liability, if any, under said contract.

They are advised and charge the fact to be by reason of the facts hereinbefore averred that they are entitled as against the Vicksburg Water Supply Co., to have said contract cancelled and annulled and as against said Vicksburg Water Works Company to have a decree that said company have never acquired any rights in or to said contract or if mistaken in this by reason of the matters and things stated they are entitled to have the same annulled and cancelled. To the end that the said complainants may have the said relief as may appear just and proper: They pray that the said Vicksburg Water Supply Company, Chester R. McFarland, superintendent of the same, the Vicksburg Water Works Company and M. O. Crumpler, superintendent of same, be made parties defendant hereto and that they be subpœnaed to appear and make answer to this complaint and to abide and perform the decrees of this court:

That said Vicksburg Water Works Company and M. O. Crumpler in, said answer be required true answers to make to the following interrogatories:

Int. 1. When and how did you or either of you become the owners of the water works plant formerly owned by the Vicksburg Water Supply Company?

Int. 2. Please append to your answers copies of all contracts and deeds whereon you base your claim and title to said works and your claim to the right and privileges conferred on Samuel R. Bullock & Company their assigns and successors under an ordinance of said city approved November 19th, 1886.

Complainants will ever pray etc.,

(Signed) VOLLER & MOUNGER,
Sol's for Compl'ts.
MAGRUDER & BRYSON,
Sol's for Compl'ts.

STATE OF MISSISSIPPI, *County of Warren:*

Personally appeared before the undersigned a justice of the peace in and for said county the within named W. L. Trowbridge, mayor

of the city of Vicksburg, who being by me duly sworn says that the matters and things in the foregoing bill contained are true to the best of his knowledge and belief.

W. L. TROWBRIDGE,
Mayor City of Vicksburg.

162 This the 7th day of December, 1900.

JOHN W. POWELL,
[SEAL.] *Justice of the Peace.*

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable H. C. Niles, judge of the United States circuit court in and for the western division of the southern district of Mississippi thereof, sitting at Vicksburg:

Your orator by way of amendment and supplement to its original bill heretofore filed against the defendant would respectfully state that since the filing of the said original bill, to-wit, on the 16th day of February, 1901:

1st. Your orator would respectfully state that since the passage and approval of the act of the legislature entitled "An act authorizing the mayor & aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy five thousand dollars ($375,000) to purchase or construct, equip and maintain water works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college, and for other purposes." Said act is to be found on page 180 *et seq.* of the sheet acts of the said State and in accordance with its terms and provisions a pretended election was held on the third day of July, 1900, under the authority of — a pretended resolution passed by the defendant on the question of bonding the city for said amount and purposes was pretended — submitted to the registered and qualified voters of said city under its act, which propositions were carried by a small majority of the voters, which question was in words and figures as follows, to-wit: "Be it resolved by virtue of the authority vested in the mayor & aldermen of the city of Vicksburg, by the act of the legislature of Mississippi, entitled An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy five thousand dollars ($375,000), to purchase or construct, equip and maintain a water works system, erect and equip a city hall, construct the necessary buildings for the hospital medical college and for other purposes. Approved March 9th, 1900.

An election shall be held on the third (3) day of July on which day the question shall be submitted to the registered and qualified voters of said city whether the bonds of said city to the amount of three hundred and fifty thousand ($350,000) dollars, to purchase or construct, equip and maintain a water works system, construct

and establish a sewerage system to purchase grounds for, erect and equip a city hall; shall be sold and issued for the above named purposes.

Be it further resolved That twenty (20) days' notice shall
163 be given in the manner provided for in said act, of the date, the amount of the bonds to be issued and the purposes for which the same are issued.

The ayes and nays being called on the motion that the said resolution be adopted, prevailed affirmatively with the following vote:

Ayes.—Homburger, Caughlin, Montgomery and Walsh.

Nays.—Fouses, Campbell and Hayes.

Said proposition will be found contained in Minute Book H. page 444 of the records of the minutes of the defendant.

2nd. Your orator respectfully shows that the proposition submitted to the qualified electors to be voted on to bond the city contains more than one object, in fact several distinct and entirely independent propositions, which were pretended to be submitted, as a whole to the qualified voters of said city, when they should have been submitted separately unaided by any other proposition and should have been so acted upon by the board of mayor & aldermen in their authority to authorize the submission of the same to the voters, and said acts of the mayor & aldermen should have been an ordinance and is therefore void and of no effect.

For these reasons including those already mentioned in the original bill in this cause the said bonds authorized to be issued and sold and said act and resolutions of said board of mayor & aldermen and said election are illegal, void and unauthorized and unconstitutional.

3rd. Your orator would further show as before stated in the original bill of complaint in this cause, the defendant caused its charter to be amended by the legislature of the State of Mississippi, in 1886 to provide for the erection and maintenance of a water works system to supply the said city with water or to contract with party or parties *to supply the said city with water or to contract with party or parties* who should build and operate water works and the city having elected to enter into a contract with S. R. Bullock & Company and assigns on the — day of November 1886, to provide defendant, the city, and inhabitants thereof with water for public and domestic purposes for thirty (30) years, at a stipulated price as agreed upon by said ordinance. Therefore said city by its contract and ordinance with S. R. Bullock & Company and assigns are precluded from issuing and selling bonds to build, construct, maintain and operate a water works of its own, as provided by said legislative act and said resolution and said election of 1900; in competition with your orator against its own contract.

The premises considered your orator prays that this honorable court will enjoin the defendant from issuing and selling the said bonds for the purpose of building and constructing water works of its own in competition with your orator, and in addition thereto that this honorable court will decree said act, resolution and election

to be invalid and unconstitutional, and that the defendant be precluded and restrained and enjoined from constructing water works of its own in said city until the expiration of your orator's
164 contract. And that the defendant be required to answer this amended bill without making any oath thereto and that your orator be entitled to and have the benefit of all of the general and special relief as may be just and right.

And as in duty bound your orator will ever pray.

Personally appeared before me L. B. Moseley, of the United State court in and for the western division of the southern district of the State of Mississippi, *I.* M. O. Crumpler, superintendent and general manager of the Vicksburg Water Works Company, and who is an authorized agent of said company — make oath that the foregoing matters and facts stated in the foregoing amended bill of complant of *its* own knowledge are true and correct and those stated on information and belief *it* believes to be true and correct.

Witness my hand and seal of office this 23rd day of April, A. D. 1901.

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

[SEAL.]

S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Complainant.

Endorsed: Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg.—Filed April 23rd, 1901. L. B. Moseley, clerk. C. D. Banks, deputy clerk. S. S. Hudson, attorney for complainant.

Your orator further shows that the said mayor & aldermen on the 30th day of April, 1901, filed a demurrer to said bill of complaint and also on the same date a plea was filed by defendant to said bill of complaint.

On the 30th day of April, 1901, the said defendant filed an answer to said bill and on the 21st day of June, 1901 the defendant filed a motion to dissolve the injunction issued. On the 21st day of June the said defendant filed an answer to the original and supplemental bills and on the 1st day of July 1901 said defendant moved for leave to file the answer herein marked by the clerk as filed June 21st, and for leave to withdraw the demurrers and pleas heretofore filed on April 30th. All of which will more fully appear by reference to the records and proceedings in the said suit entitled Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg.

That an injunction was duly granted but the bill was subsequently dismissed for the alleged want of jurisdiction, an appeal was prosecuted to the Supreme Court of the United States which was sustained—the jurisdiction sustained and cause remanded as will appear from said proceedings and opinion of the court in said case.

Your orator will further show that proof has been taken
165 in this cause and that the same was by order of this honorable court set down for hearing at Jackson on the — day of May, 1904.

Your orator further shows that it on December 1st 1903 by purchase, and by deed of conveyance and for a valuable consideration acquired all the right, title, and interest of the said Vicksburg Water Works Company in and to the said property described in its said bill of complaint and acquired all of its contract rights therein mentioned and particularly its contract with the said mayor & aldermen of the city of Vicksburg, and also the property set forth in said bill of complaint, and acquired the right to prosecute this suit and also acquired all the estate, right, title, interest, property, posession, claim and demand whatsoever, as well in law as in equity of the said Vicksburg Water Works Company of, in and to the property described in said bill of complaint or which it may thereafter acquire and each and every part and parcel thereof, with the appurtenances, and also that certain written contract made by and between the city of Vicksburg, Mississippi and Samuel R. Bullock & Co., dated the 18th day of November, 1886, for the rental of water hydrants for the use of the city and the supplyof the inhabitants thereof with water for a period of thirty years, and acquired all the right and title of the said Vicksburg Water Works Company in and to the said pending suit.

A copy of said deed of conveyance is herewith filed as Exhibit "A."

Your orator further shows that since the filing of the original and supplemental bill of said Vicksburg Water Works Company the said defendant has enacted and adopted as a part of its charter sections 3014, 3015 and 3016 of the Annotated Code of Mississippi, 1892.

Your orator further shows that it duly accepted all the obligations, conditions and terms imposed upon said S. R. Bullock & assigns by said ordinance and contract and duly notified defendant in writing on the 2nd December 1903, of the said acceptance and ownership of said contract and on the 1st December 1903, it took possession of and operated said water works plant under said deed and has been in possession and operating the same and supplying the inhabitants and defendant ever since with water in accordance with the terms and obligations of said contract which water has been accepted and used by said defendant and that your orator has complied in all respects with terms, conditions and obligations of said contract and said defendant has recognized your orator as the assignee of said contract.

Wherefore, for as much as your orator can have no adequate relief at law but only in a court of equity, where matters of this sort are cognizable and relievable and to the end that the defendant may be required to answer but not under oath (answer under oath being hereby expressly waived) each and all of the allegations hereinbefore stated, and may be required to desist the further infringement and invasion of your orator's lawful rights and may be decreed from

constructing or acquiring and operating a system of water
166 works in competition with your orator's water works, and to the end that your orator may have such other and further relief as unto your honors may seem proper, wherefore your orator prays.

1st. That defendant may be compelled to answer the premises (not under oath).

2nd. That the defendant may be enjoined, perpetually from assuming to abrogate and take away the franchises and contract rights of complainant and from endeavoring to disable complainant from carrying on its business and to destroy its credit, and the value of its property, and to coerce said complainant to sell its water works to defendant for an inadequate price, and that defendants may be enjoined and restrained from otherwise carrying on the unlawful conspiracy aforesaid entered into by it and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy and that said act of the legislature of Mississippi adopted on the 9th of March 1900 and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900 be decreed to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and to be invalid and of no effect as against your orator.

That the court decreed that said contract is legal, valid and binding on defendant in every respect and that said defendant be required to execute the same in all of its provisions and refrain from any attempt to repudiate, ignore, rescind or annul said contract in any particular.

3rd. May it please your honors to grant unto your orators a writ of injunction issuing out of this honorable court under the seal thereof directed to the defendant, its officers, attorneys and servants, and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant and from endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy aforesaid entered into and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy, as well as for a decree requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer.

IV. May it please your honors to grant unto your orators not only a writ of injunction, but further more a writ of *subpœna ad respondendum* directed to the defendant, namely The Mayor & Aldermen of the City of Vicksburg (corporation as aforesaid): and thereby to command them upon a day certain therein named to be and appear in this honorable court to answer the premises and to perform and abide by such further order of the court as to your honors may seem meet to the end that your orator may have full and adequate relief in the premises.

167 V. Your orator would further pray for a decree against defendant for all moneys due it under said ordinance with 6% interest per annum thereon from the date of their respective maturities until it is paid.

VI. The premises considered, your orator therefore respectfully asks this honorable court for an injunction restraining defendant from perpetuating any minutes or ordinances or resolutions of its own whereby it denies liability or seeks to annul or refuses to pay your orator contract price for water used by them as per the ordinance price and to continue to do so until this cause is heard upon its merits and that the rights of all parties concerned may be preserved.

VII. May it please your honors to further grant to your orator such other and further relief as the facts aforesaid may demand and as may be in conformity with equity and good conscience and in accord with the practice of this honorable court as a court of equity.

Your orator would further pray that this honorable court will enjoin the defendant from issuing and selling said bonds for the purpose of building and constructing water works of its own in competition with your orator and in addition thereto that this honorable court will decree said act, resolution and election to be invalid and unconstitutional and that the defendant be precluded and restrained and enjoined from constructing water works of its own in said city until the expiration of your orator's contract. That your orator be adjudged to be the owner of all of said property contracts and rights decrees orders pleadings prayers etc. of said Vicksburg Water Works Co. & be subrogated to and vested with all the rights of every kind acquired or to which said Vicksburg Water Works Co. is entitled to in this suit. And that the defendant be required to answer this amended bill without making any oath thereto and that your orator be entitled to and have the benefit of all general and special relief as may be just and right.

And as in duty bound your orator will ever pray.

CITY WATER WORKS & LIGHT CO.,
By M. O. CRUMPLER, *Sec., Treas., & M'g'r.*

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
For Compl'ts.

STATE OF MISSISSIPPI,
Western Division of the Southern District of Miss., City of Vicksburg, Miss:

M. O. Crumpler of lawful age being duly sworn on his oath says that he is secretary, treasurer & general manager of the City Water Works & Light Company & that the matters & facts set forth in the foregoing bill of complaint of the City Water Works & Light
168 Company are true except as to such charges as are herein stated to be upon information and belief & as to those he

believes *that* the said charges so made to be true & further affiant saith not.

M. O. CRUMPLER.

Sworn to and subscribed before me the undersigned this 5th day of May, 1904.

L. B. MOSELEY, *Clerk.* [SEAL.]

The above and foregoing has the following indorsement thereon to-wit:—City Water Works & Light Co. *vs.* Mayor & Aldermen of Vicksburg.—O. bill in the nature of a supplemental bill in V'burg Water Works Co. *vs.* Mayor & Aldermen of V'burg.—Filed May 5, 1904, at 11.40 o'clock a. m. L. B. Moseley, clerk.

Notice of Intention of Complainant to Press Suit and to Withdraw Petition of City Water Works & Light Company.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG.

To the Mayor & Aldermen of the City of Vicksburg, Bryson and Dabney, Esqs., and W. J. Voller, Esq., attorneys of record:

You are hereby notified that we will appear before the Honorable H. C. Niles, in the Federal court room at Jackson, Mississippi, to-morrow, May 12th, 1904, at nine o'clock a. m. sharp, and respectfully request the court to hear and determine in accordance with the previous order of the court, the above entitled case upon its merits.

You are further hereby notified that we withdraw the petition of the City Water Works & Light Company filed in this cause on the 2nd day of December, 1903, and the original bill in the nature of a supplemental bill filed by the said company on the 5th day of May, 1904, and you need not answer either the said petition or the said bill.

We wish to avoid all delay and procure if possible an early determination of this controversy.

Respectfully yours,

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Solicitors for the Vicksburg Water Works Co. and City Waterworks & Light Co.

Vicksburg, Miss., May 11th, 1904.

169 We accept service of this notice this 11th day of May, 1903.

BRYSON & DABNEY,
For Defen't.

Served by me on, and accepted by, J. C. Bryson at 12-45 p. m.
CARL FOX.

The above and foregoing has the following indorsement thereon to-wit: City Water Works & Light Co. *vs.* Mayor & Aldermen of Vicksburg—Notice of motion to withdraw petition filed 2 Dec. 1903 & O. bill by way of supplemental bill on the 5th Dec. 1904.—Filed May 11/1904. L. B. Moseley, clerk, J. H. Short, D. C.

Motion of the City Water Works & Light Company to withdraw petition filed December 2nd, 1903, & original bill in the nature of a supplemental bill heretofore filed, & Vicksburg Water Works Company also ask for leave to withdraw its written consent to filing of said petition.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

And now comes the City Water Works & Light Company, and the said City Water & Light Company, moves the court for leave to withdraw from the files:

1st. Its petition filed December 2nd. 1903.

2nd. Its original bill in the nature of a supplemental bill filed May 5th, 1904, and all exhibits to said bill and petition.

Notice to opposing counsel hereto attached.

And the said Vicksburg Water Works Co. also moves the court for leave to withdraw the written consent to the filing of said bill from the files.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Sol's for Vicksburg Water Works Co. &
City Water & Light Co.

The above and foregoing has the following indorsement thereon to-wit:—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Motion for leave to withdraw bill etc.—Filed May 13, 1904. L. B. Moseley, clerk.

170 *Order Allowing Motion Immediately Preceding This Order.*

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day came on to be heard the motion of the City Water & Light Co. to withdraw from the files its petition herein filed December 2" 1903, and its original bill in the nature of a supplemental

bill filed May 5th, 1904 and all exhibits and the motion of the Vicksburg Water Works Co. to withdraw from the files its written consent to the filing of said bill.

And the court being fully advised in the premises doth hereby order adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent.

This May 3rd, 1904.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit: No. 41 Eq.—Vicksburg Waterworks Co. *vs.* Mayor & Aldermen of Vicksburg.—Order permitting withdrawal of petition.—Entered M. B. 2 p. 51. & filed May 14/1904.—L. B. Moseley, clerk, J. H. Short, D. C.

Complainant's Motion to Suppress Certain Interrogatories and Answers in Deposition of M. O. Crumpler.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

And now comes the said complainant and objects to the following cross-interrogatories propounded to M. O. Crumpler and his answers thereto, to-wit:

Cross-interrogatories 135, 136, 137, 138, 139, *139,* 140, 141, 142, 143, 147, and his answers thereto.

And all cross-interrogatories and the answers thereto relating to the City Water Works and Light Co. and the words, "City Water Works and Light Co." wherever they appear and moves the court to suppress said interrogatories and answers and words and for causes shows:

1. That they — irrelevant and incompetent.
2. That there is no issue in the cause to which they relate.

S. S. HUDSON,
SMITH, HIRSH & LANDAU,
Soli's for Compl't.

171 The above and foregoing has the following indorsement thereon to-wit: No. —. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Motion to suppress certain cross-interrogatories and answers thereto in M. O. Crumpler's deposition—Filed, May 13, 1904. L. B. Moseley, clerk.

Motion of Defendant for Leave to File Supplemental Answer & for Continuance.

L. B. Moseley, Clerk United States Circuit & District Courts, Jackson, Miss.

Circuit Court of the United States for the Western Division of the Southern District of Miss.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant by its solicitors and moves the court for leave to file the following and attached supplemental answer and for a continuance with leave to take testimony to support the allegations of the said supplemental answer.

W. J. VOLEER &
BRYSON & DABNEY,
Solicitors for Defendant.

Supplemental Answer.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The Supplemental Answer of the Defendant to the Bill of Complaint Hereinbefore Filed Against It.

Defendant respectfully shows that since the filing of the bill of complaint herein and the filing of its answer hereto, the act of the legislature of the State of Mississippi, described in the said bill of complaint, whereby the city of Vicksburg was authorized to issue bonds in the sum not exceeding $150,000 for the purpose of erecting water works of its own, or purchasing the water works plant now in existence, was, on the — day of March, 1904, repealed by the
172 legislature of the State of Mississippi, and the defendant now has no power or authority under said act to either erect or purchase a system of water works.

Defendant further shows that since the filing of said bill of complaint and since the filing of its answer thereto, the resolutions described in the said bill of complaint and adopted by it on the 7th day of November, 1900, whereby it denied all liability under the contract with complainant, set out in said bill, was, on the 2nd day of May, 1904, rescinded, and is now wholly inoperative and without effect,

and a copy of the rescinded resolution is hereto attached as Exhibit "A."

Defendant further shows that on July 31, 1903, The Vicksburg Water Works Company, the complainant herein, executed a certain instrument of conveyance, which is herewith filed as Exhibit "B" and prayed to be taken as a part hereof, whereby it purported to convey to the City Water Works & Light Company all of its real estate and personal property, including all property of every sort whatsoever, together with the tenements, hereditaments, and appurtenances thereunto belonging, which had been acquired and were used by it in and about the performance of its functions as a water works company, in the supply of water to the city of Vicksburg and the inhabitants thereof, in accordance with the contract with said city set out in said bill of complaint.

Defendant shows that the said instrument of conveyance also purported to convey the corporate franchises, privileges, rights and liberties owned and exercised by the said Vicksburg Water Works Company, and also the contract made by and between the City of Vicksburg and Samuel R. Bullock & Company on April 16, 1886 for the rental of water hydrants for the use of said city and the supply of the inhabitants thereof for a period of thirty years.

Defendant shows that on December 2, 1903, the said City Water Works & Light Company filed a written notice with this defendant to the effect that the said contract entered into between Samuel R. Bullock & Company, their associates, successors and assigns, and the Board of Mayor & Aldermen of the City of Vicksburg had been assigned to the said City Water Works & Light Company, which was described as being of South Dakota, and that the said City Water Works & Light Company had accepted the terms and conditions of the contract provided therein.

Defendant shows that in pursuance of said instrument of conveyance, the said Vicksburg Water Works Company turned over and delivered to the said City Water Works & Light Company the full and complete possession, use and control of all the property described in said instrument of conveyance, which included, as hereinbefore stated, all property of every sort whatsoever which had been acquired by it and which was used by it in and about the discharge of its duties in supplying water to the defendant and the citizens of the city of Vicksburg, whereby, defendant shows, that the said Vicksburg Water Works Company completely disabled itself from
173 discharging its corporate functions and from furnishing water to the city of Vicksburg and its inhabitants.

Defendant shows that the said Vicksburg Water Works Company is not now in the exercise of any of its corporate functions, so far as relates to the business of supplying water to the city of Vicksburg or its inhabitants, but that it has completely abandoned all of its public purposes, and is now, even if it has not been completely dissolved as to which defendant is unadvised, a corporate waif and derelict without any cause or reason for existence, and without any capacity and potentiality whatever in so far as concerns the purposes for which its charter was granted.

Defendant shows that the said Vicksburg Water Works Company is no longer interested or concerned with any of the matters concerning which rights are claimed in the bill of complaint filed by it herein, and that this court can grant no relief thereunder of which it could avail itself, or which would be of any benefit whatsoever to it.

Defendant shows that whatever may have been the rights of the said Vicksburg Water Works Company at the time it filed its bill of complaint herein, it has now, by its own act, disabled itself from further prosecuting this suit inasmuch as it has and can have no interest whatsoever in any decree which this court might or could render herein.

Defendant shows that the Vicksburg Water Works Company was a quasi public corporation, created under the general corporation laws of the State of Mississippi, and that it had no power or authority to execute the instrument of conveyance hereinbefore described, or to convey, deliver, and turn over to the said City Water Works & Light Company, the property therein described, whereby it completely disabled itself from performing its corporate functions.

Defendant shows that the said attempted conveyance to the said City Water Works & Light Company is null and void and that it derived no title thereto, *yet* that complainant can invoke no relief against the same in a court of equity.

Defendant shows, however, that the said City Water Works & Light Company is in possession of all of said property and claims to be the owner thereof, and also of the contract with this defendant, described therein and filed with said bill of complaint and that by reason of such conveyance to it the bill filed herein has become defective for want of parties, inasmuch as it has been necessary that the said City Water Works & Light Company should be made a party to said bill of complaint.

Defendant shows that no decree which this court might make herein would be binding upon the said City Water Works & Light Company and that it would not be binding upon this defendant in any controversy which might arise between it and the said City Water Works & Light Company.

Defendant shows that this court can make no decree for
174 the benefit of the said City Water Works & Light Company as it is not a party to this suit.

Defendant therefore suggests that the bill is defective for want of parties and that the said City Water Works & Light Company should be made a party complainant, as otherwise this court cannot proceed further in the premises, but must, by reason of the facts herein shown dismiss this bill.

Defendant further shows that the said Vicksburg Water Works Company, by reason of its illegal and unlawful contract with the City Water Works and Light Company, by which it has disabled itself from discharging its public duties and its functions generally as a water works company, has by its own act put itself in the attitude of a wrongdoer and for that reason is not entitled to the aid of a court of equity and that as to any rights which it may have, or

which — feels that it is entitled to — should be remitted to a court of law.

And now having fully answered as to all matters which hath happened since the filing of the original bill of complaint herein, defendant prays that the said bill may be dismissed and it allowed to go hence without day, together with all its costs in this behalf expended, and it will ever pray &c.

MAYOR & ALDERMEN OF THE CITY OF VICKSBURG,
By W. J. VOLLER &
BRYSON & DABNEY, *Solicitors.*

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me the undersigned, W. J. Voller, to me personally known to be the city attorney of the city of Vicksburg who made oath that the matters and things set out in the foregoing answer are true to the best of his knowledge and belief.

W. J. VOLLER,
Attorney for the Mayor & Aldermen of the City of Vicksburg.

Subscribed and sworn to before me this 13th day of May, 1904.
L. B. MOSELEY, *Clerk.* [SEAL.]

EXHIBIT "A."

That "the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor & aldermen deny any liability upon any contract for the use of the water works hydrants; that from and after August 1900 they will pay a reasonable compensation for the use of said hydrants; that the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises."

175 EXHIBIT "B."

In consideration of ten dollars cash in hand paid and for other good and lawful considerations, the Vicksburg Water Works Company, of Vicksburg, Warren county, Mississippi, hereby convey and warrant unto the City Water Works & Light Company the following described real and personal property subject, however, to all bonded indebtedness now existing against the said property, belonging to the Vicksburg Water Works Company, situate, lying and being in Vicksburg, in Warren county, Mississippi, to-wit:—

All square twenty-three (23), and lots one hundred and twenty-one (121) one hundred and twenty-two (122) one hundred and twenty-three (123), and one hundred and twenty-four (124) in square twenty-seven (27) and a strip of land sixty (60) feet wide

lying between said squares as laid down on the Vicksburg Wharf & Land Company survey as recorded on page three sixty-two (362) of Book No. Sixty-two(62) of the records of deeds of said county, and also a strip of land sixty (60) feet wide off of the south end of lot five hundred and eight (508) in square twenty-four (24) and a strip sixty (60) feet wide off of the south end of lots five hundred and nine (509) and five hundred and ten (510) in square twenty-five (25 of the said survey, cut off by line parallel with the south lines of said squares, also that certain parcel of land in the said survey bounded and described as follows, to-wit:—Beginning at the south-west corner of lot one hundred and twenty-one (121) in said square twenty-seven (27) and running thence north thirty-one (31) degrees and thirty-six (36) minutes east along the west line of said square- twenty-seven (27) and twenty- three (23) five hundred and eighty nine and nine tenths (589.9) feet to the north west corner of said square twenty-three (23) thence north sixty-nine (69) degrees and forty-four (44) minutes west, fifty and nine-tenths (50.9) feet to the center of the track of the Louisville, New Orleans, & Texas Railway Company, thence south, thirty-one (31) degrees and thirty-six (36) minutes west down the center of said track two hundred and ninety one and twenty-two one-hundredths (291.22) feet, thence north sixty-nine (69) degrees and forty-four (44) minutes west fifty and nine one-hundredths (50.09) feet to the east line of the said square twenty-four (24) thence south thirty-one (31) degrees and thirty-six (36) minutes west along said line sixty-one and eighteen one-hundredths (61.18) feet to the south-east corner of said square twenty-four (24) thence south sixty-nine (69) degrees and forty-four (44) minutes east fifty and nine one-tenths (50.9) feet to the center of said track thence south thirty-one (31) degrees and thirty-six (36) minutes west along the center of said track two hundred and thirty-seven and four-tenths (237.4) feet and thence south sixty-nine (69) degrees and forty-four (44) minutes east *and* fifty and nine-tenths (50.9) feet to the place of beginning.

176 Also a right of way and privilege of constructing a tunnel under the track and property of the Louisville, New Orleans and Texas Railway Company which track and property is now located over and through the last described parcel of land, which right of way was granted to the Vicksburg Water Supply Company by Samuel R. Bullock *et al.*, by deed of November twelfth, eighteen hundred and eighty-eight recorded in Deed Book No. Sixty-five (65) pages three hundred and ninety-five (395) and three hundred and ninety-six (396) of the records of deeds of Warren county, Mississippi. Also parts of lots thirty-nine (39) and forty (40) in square three (3) according to the plan of James M. Searles' resurvey of Castle Hill recorded in Deed Book Fifty-nin- (59) page three hundred and thirty (330) of the record of deeds of said county, and more particularly described as follows: Commencing at the south west corner of lot forty (40) of the said square as established by the said Searles' resurvey thence along the south line of lot forty (40) two hundred and eighty (280) feet to an iron post thence north twenty-nine (29) degrees and fifteen (15) minutes west true bearing one hundred and

forty- one and one half (141½) feet to an iron post on the northern line of lot thirty-nine (39) thence along said north line one hundred and eighty (180) feet to its intersection with Walnut street to an iron post, thence along the front of said lots thirty-nine (39) and forty (40) on the east side of Walnut street one hundred (100) feet to an iron post to the point of beginning together with all water works, buildings, pump houses stand pipes reservoirs, machinery, pipes, mains, hydrants apparatus and equipment, situate in the city of Vicksburg, county of Warren and State of Mississippi, and together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, tolls, rents, issues, profits and income accruing therefrom and also all lands, tenements, hereditaments all other property whatsoever real and personal now owned or which may hereafter be acquired by said water works company. Also all and singular the corporate franchises privileges rights and liberties which the Vicksburg Water Works Company now hath and can exercise or shall hereafter acquire and possess. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said water company of, in *an* to the property above described or which may hereafter be acquired, and each and every part and parcel thereof, with the appurtenances. Also that certain written contract made by and between the City of Vicksburg, Mississippi, and Samuel R. Bullock & Company dated on the eighteenth day of November eighteen hundred and eighty six, for the rental of water hydrants for the use of the city and the supply of the inhabitants thereof with water for a period of thirty years.

In witness whereof the Vicksburg Water Works Company caused these presents to be signed by its vice president and its corpo-
177 rate seal attested by its secretary to be hereto affixed this 31st day of July, 1903.

VICKSBURG WATER WORKS COMPANY,
By ALBERT N. EDWARDS, *Its Vice President.*

[SEAL.]

Attest:
M. O. CRUMPLER, *Secretary.*

STATE OF MISSOURI, *City of St. Louis, ss:*

This day personally appeared before me the undersigned a notary public in and for the city of St. Louis, State of Missouri, the within named Albert N. Edwards, vice president of the Vicksburg Water Works Company, who acknowledged that he signed, caused the corporate seal of the said company to be affixed and delivered the foregoing instrument as the act and deed of the said company on the day and year therein mentioned.—Given under my hand and official seal this 31st day of July, A. D. 1903.

[SEAL.] R. L. GURNEY,
Notary Public.

My term expires Dec. 19" 1906.

STATE OF MISSISSIPPI, *Warren County:*

This day before me, the undersigned, a notary public in and for the city of Vicksburg Mississippi personally appeared M. O. Crumpler, secretary of the Vicksburg Water Works Company, who acknowledged that he signed, affixed the corporate seal of the said company and delivered the foregoing instrument as the act and deed of the said company on the day and year therein mentioned. Given under my hand and official seal this 3rd day of August, 1903.

[SEAL.] WM. WAGGONER,
Notary Public.

My commission expires March 7th, 1904.

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county, hereby certify that the foregoing instrument of writing was filed in my office for record on the 1st day of December, 1903, at 10 o'clock a. m. and recorded in Deed Book No. 101 page 414, *et seq.* Witness my hand and seal of said court this 1st day of December 1903.

J. D. LAUGHLIN, *Clerk,*
[SEAL.] By J. E. GORMAN, *D. C.*

178 STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county, hereby certify that the foregoing five pages and eleven lines contain a true and correct copy of the deed from the Vicksburg Water Works Company to the City Water Works & Light Company recorded in Deed Book No. 101, page 414 *et seq.*, as the same appears on file and of record in my said office. Witness my hand and seal of said court this the 28th day of April, 1904.

J. D. LAUGHLIN, *Clerk.* [SEAL.]

The above and foregoing deed has the following indorsement on the back thereof: "Copy.—Vicksburg Water — Company to City Water Works & Light Company. Deed."

Notice of the Assignment of Contract and the Acceptance of Its Terms and Conditions.

To the honorable Board of Mayor & Aldermen of Vicksburg, Mississippi:

GENTLEMEN: This is to notify you that the contract made and entered into between Samuel R. Bullock & Company, their associates, successors and assigns, and the Board of Mayor & Aldermen of Vicksburg, Mississippi, dated the 18th day of November, 1886, and approved the 19th day of November, 1886, whereby Samuel R. Bullock & Company their associates, successors and assigns, were to build a water works plant in the city of Vicksburg, Mississippi, and

to furnish water to the city of Vicksburg, Mississippi, and its inhabitants for public and private use for a period of thirty years, has been assigned to the City Water Works & Light Company of South Dakota; and that the City Water Works & Light Company accepts the terms and conditions in the said contract as provided therein this November 28th, 1903.

CITY WATER WORKS & LIGHT COMPANY,
By R. L. GURNEY, *Pres.*

Filed in this office this 2nd day of Dec. 1903.
[SEAL.] W. L. TROWBRIDGE, *Mayor.*

The above and foregoing has the following indorsement thereon, to-wit: Vicksburg Water Works Co. *vs.* City of Vicksburg. Motion for leave to file supplemental answer and for continuance.—Filed May 13th, 1904. L. B. Moseley, clerk.

179 *Order Overruling Motion for Continuance and Leave to File Supplmental Answer.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATERWORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day came on to be heard defendant's motion this day filed for leave to file the supplemental answer attached to the said motion and for a continuance with leave to take testimony in support of the allegations of the said supplemental answer and the court having heard the arguments of counsel and being advised in the premises it is considered that the said motion be and it is hereby over-ruled.

So ordered this 13th day of May 1904.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit: 41.—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg.—Order over-ruling motion to continue.—And denying leave to file amended answer. Filed as of May 13th, 1904, as per order dated Nov. 28, 1904. L. B. Moseley, clerk.—J. H. Short, D. C.

Order Suppressing Testimony of M. O. Crumpler.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day this cause came on to be heard in accordance with the motion of complainant and defendant herein filed January 12th, 1904, and the order of the court therein rendered January 12, 1904, and thereupon the motion of complainant to suppress cross-interrogatories 135, 136, 137, 138, 139, 140, 141, 142, 143, 147 propounded to M. O. Crumpler his answers thereto and all the answers relating to the City Water Works & Light Company and the words City Water Works & Light Company wherever they appear now on file.

And the court after hearing the arguments of counsel and considered the objections of the defendant and being fully satisfied in the premises doth hereby order, adjudge and decree that said motion be and the same is hereby sustained and the said cross-interrogatories, said answers and said words be and the same are hereby suppressed and ordered stricken from the record.

This 18th day of May, 1904.

H. C. NILES, *Judge.*

180 The above and foregoing has the following indorsement thereon, to-wit: Equity. *No.* #41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Order suppressing testimony—Ent'd filed May 18th, 1904. Recorded M. B. 2 p. 58. Ent. M. B. #8 folio 355. L. B. Moseley, clerk. J. H. Short, D. C.

Complainant's Evidence.

Upon the trial of this cause the following depositions were introduced in evidence on behalf of complainant.

Deposition of H. H. Haralson.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

No. —.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is understood and agreed that the answers of Dr. H. H. Haralson, to the appended interrogatories, and cross interrogatories when made under oath before some officer authorized by the State of Mississippi, to administer oaths may be read in evidence on the hearing

of the above entitled cause subject only to objections for irrelevancy and incompetency; notice and commission and all matters of form are hereby expressly waived; the certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal captions and certificate of such officer *is* expressly waived, and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscribed before me this — day of ——"

and signed by the officer with dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Att'ys for Compl't.
W. J. VOLLOR &
BRYSON & DABNEY,
Att'ys for Def't.

Interrogatories to be Propounded to Dr. H. H. Haralson.

Int. 1. State your name, age, residence and occupation?

Int. 2. If you say you are a practitioner of medicine, please state how long you have been engaged in such occupation?

Int. 3. Where have you practiced your profession?

181 Int. 4. Please state if you know what diseases are commonly conveyed by drinking water?

Int. 5. If you state you have practiced medicine in Scott county, Biloxi and Vicksburg Mississippi, please state if you know how the health of Vicksburg, Miss. compares with other places in Mississippi as to diseases conveyed by drinking water.

Int. 6. Please state the kind of water generally used by the people for domestic purposes at each place.

Int. 7. If you say you practice medicine in Vicksburg, please state whether or not if you know the kind of water your patients use for drinking purposes?

Int. 8. If you state they use both cistern and hydrant waterworks water, state if you know which is the most wholesome water used by your patients and give your reasons, if any for so stating?

Int. 9. Please state whether, or not, your reasons for so stating are based upon water used by patients in Vicksburg prior to May, 1903.

Int. 10. Are you in any way connected with or interested with the complainant in this suit?

Int. 11. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue, in this case, or either of them or that may be material to the subject of this your examination, or the matters in question in this case? If yea, set forth the same fully and at large in your answer?

Cross Interrogatories.

X Interrogatory 1. State the distance as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtains its supply of water northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtains its supply.

X Int. 3. Can you say whether the water discharged from the Yazoo river is good and wholesome and fit for all purposes of domestic or manufacturing consumption.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution.

X Int. 5. State if it is not a fact that for the greater part of its course the Yazoo river passes over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is a fact state if it is not true that the water in Yazoo river is generally considered bad and that if it is used for drinking purposes it is likely to produce malarial diseases.

X Int. 6. State if it is not a fact that the sewerage from a
182 large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the water works company.

X Int. 7. State as fully as you can the size and length of the said Washington Street sewer.

X Int. 8. State as fully as you can the extent of sewerage carried by said sewer, and discharged through it into the Yazoo river, especially state if it is not a fact that nearly all of the business houses on Washington street have their waterclosets discharged into said sewer and particularly does not the offal and excrement from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish Club, Elks Club, Vicksburg sanitarium, opera house, jail, St. Francis Xavier's college, city hall, and U. S. postoffice, and particularly all of the dwellings on South street from Adams street, west to Washington street drain into and discharge through said sewer.

X Int. 9. State as fully as you can the general direction of the surface drainage from the city of Vicksburg and particularly whether or not it is westward from the larger part of said city into the Yazoo and Mississippi rivers, and along such part of the same as is within two miles northward of the intake pipe of said company.

X Int. 10. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage and if you can state that you have such knowledge, state as fully as you can the extent of the contamination, and whether the [illegible]

from said Yazoo river is good and wholesome and fit for domestic uses.

X Int. 11. State whether any part of the water taken and used by said water works company comes from the Yazoo river, and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

X Int. 12. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicksburg, and other consumers by said water works company prior to the installation of the filter plant now in use.

X Int. 13. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 14. State as fully as you can whether all water so furnished as aforesaid since the installation of said filter plant, has been passed through said plant, and if you state that it has not state how often said company has furnished such unfiltered water, and how long at a time.

X Int. 16. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals which had been used in filtering water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers and its odor or
183 scent if it had any since the installation of the filter plant, and whether the same was not charged with mud, and other insoluble matter in excess of what it was when first taken from the river.

X Int. 17. State any tests or examination you may have made with unfiltered water since the installation of said filter.

X Int. 18. State the quality of the water supply used by said company when it is first pumped into its basins and before the same had been treated in any way with chemicals or passed through the filter.

X Int. 19. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome, and fit for all purposes of domestic or manufacturing consumption, in its original state as it is taken from the source of supply and before it is treated in any way by chemicals or passed through the filter.

X Int. 20. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reasons in full.

X Int. 21. If you cannot state that it is free from contamination state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 22. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good and wholesome water, state why you have not considered the same good and wholesome.

X Int. 23. If you cannot state that said water as taken from the source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 24. State as fully as you can to what tests or examinations you have put such water to, in its original state as taken from the source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes state if you have any knowledge of the same in regard to uses not coming under your tests, or examination.

X Int. 25. If you have stated in answer to any of the foregoing interrogatories that the water as taken by said company from the source of supply falls short of the standard of purity above mentioned, viz: "that it shall be free from all sewerage, contamination and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption," state the particular ground or quality wherein it falls short of such standard and to what extent it fails or has failed to meet the required standard.

X Int. 26. State whether said company prior to the installation of its filter, treated the said water in any way with chemicals or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

X Int. 27. State whether said company maintained settling basins at its pumping station, and pumped the water from its source
184 of supply first into such basins before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins and how long the water was permitted to remain therein before pumping the same into the mains for use by consumers.

X Int. 28. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 29. State, if you know, how long said basins were allowed to stand without having the sediment from such water removed therefrom.

X Int. 30. State whether or not you filtered, or in any other way treated the water supplied you by said company or any part thereof before using the same, and if you state that you did, state why you found it necessary to filter or otherwise treat the same.

X Int. 31. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your readings or conversations you have ever heard of such that was or is supplied with water taken from a stream which flowed through or by such city, town or village, at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know, have seen or heard of such city, town or village, give the name and location of such.

X Int. 32. State if it is not a fact that diseases which are produced by or result from the use of contaminated water have been more prevalent in the city of Vicksburg during the year of 1903, than formerly.

X Int. 33. If you should state that you consider the health of the city of Vicksburg good, state whether or not you consider such condition the result of the excellency of the water which is now and has heretofore been furnished by the water works company.

X Int. 34. State if there are not many other good and sufficient causes for the state of good health which prevails in the city of Vicksburg, other than the excellency of its water supply.

X Int. 35. State if you have not found the health of the people adjoining the city of Vicksburg, and beyond the limits where the Vicksburg Water Works Company supplies water as good as it is in the City of Vicksburg.

X Int. 36. Compare the health conditions which you have found in the city of Vicksburg with the conditions which obtain in the village of Speeds addition, in such section of said village as does not use the water from the said water works company.

X Int. 37. Compare the health conditions existing in the Fort Hill district, north of the city of Vicksburg, with the health conditions of the city of Vicksburg, and state which you have found to be the better?

X Int. 38. State if it is not a fact that there were an exceedingly large number of cases of typhoid fever in the city of Vicksburg during the spring and summer of 1903, and if you state that
185 there was, please state what you consider to have been the cause of such conditions.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

Answers of Dr. Hugh H. Haralson, to the interrogatories and cross interrogatories propounded to him in the case of Vicksburg Water Works Company *v.* Mayor and Aldermen of Vicksburg.

Answer to interrogatory 1. Hugh H. Haralson, age forty-nine years, residence Vicksburg, Mississippi, occupation practitioner of medicine.

Ans. Int. 2. I have been engaged in the practice of medicine twenty four years.

Ans. Int. 3. I have practiced my profession in Scott county, at Biloxi, in Harrison county, and at Vicksburg in Warren county, all of Mississippi.

Ans. Int. 4. Only two diseases are commonly conveyed by drinking water, viz: simple diarrhea and typhoid fever.

Ans. Int. 5. I practiced in Scott county seventeen years, at Biloxi two years, and in Vicksburg five years. According to my observation the diseases conveyed by drinking water were of more frequent occurrence in Scott county and Biloxi than in Vicksburg.

Ans. Int. 6. The kind of water generally used in Scott county is cistern water and well water; in Biloxi artesian water, and shallow well water; in Vicksburg cistern and hydrant water works water.

Ans. Int. 7. In Vicksburg my patrons drink cistern water and hydrant water works water.

Ans. Int. 8. I consider the hydrant waterworks water by far the most wholesome water used by my patrons in Vicksburg. My reason for so stating is because the diseases more commonly con-

veyed by drinking water are of more frequent occurrence among those of my patrons using cistern water than among those using hydrant waterworks water.

Ans. Int. 9. Since I have been in Vicksburg covering a period of a little more than five years, I have never had a case of typhoid fever among those of my patrons who use hydrant waterworks water, but I have had fifty or more cases of typhoid fever during this time, among those of my patrons who use cistern water. According to this record, the hydrant waterworks water was as wholesome before as it has been since May, 1903.

Ans. Int. 10. I am in no way connected with or interested with the complainant in this suit.

Ans. Int. 11. While the question of water supply in general has been extensively studied, there is much yet to be learned concerning it. Public water supply is always obtained from one of two sources, viz: surface water or well water. By surface water is meant
186 all collections of water in free contact with the atmosphere, whether in motion or at rest. This includes everything from the smallest pool to the largest lake and from the narrowest rivulet to the broadest river. This being the case, it is quite evident that a vast majority of towns and cities must obtain their water supply from surface water. Should we admit, which we do not, that we ought not to use it, we will find practically that we must. I am one of those who believe that the Mississippi River water is the most wholesome water in the world. There are physical reasons, which will be set forth later why an artesian well water supply cannot compare with the Mississippi river in point of healthfulness or wholesomeness. It is a fact well known to the medical profession although possibly not so well known to the laity, that aside from simple diarrhea, the principal disease conveyed by water in civilized communities is typhoid fever. While this disease is thought to be due to a specific bacillus, which has been isolated and recognized time and again, it is a well known fact that this bacillus is rarely found in water even known to be contaminated. While the water supply of the city of Philadelphia is constantly propagating typhoid fever, her bacteriologists state that they have never been able to detect in her water supply a bacillus which they could clearly identify as the typhoid bacillus.

Should a condition of typhoid contamination arise in well water whether deep or shallow, or in surface water at rest, it would probably be permanent and constant, and in consequence be a standing menace to the health of the community. But in moving surface water, such as the Mississippi river, on account of the various conditions disturbing organic life in the water, it would not be permanent and constant, and in consequence it would not be a standing menace to the health of the community.

Underground cistern water in any town or city that permits cess pools and privy sinks cannot be otherwise than a standing menace to the health of that city. The danger from this source increases in proportion to the increase of its population, cess pools and sinks. It is a condition that will continue even after the cesspools and privy

sinks have been discontinued, because the earth is literally saturated with human excrement which may for years find its way into some nearby cistern. In a city of the size of Vicksburg no underground cisterns or wells should be allowed for drinking purposes. When a running stream has been polluted by sewerage a process of self purification occurs by sedimentation, by the action of bacteria and of microzoa which feed upon the organic matters. The rapidity and completeness by which this natural purifying process goes on depends upon the amount of dilution of the sewerage, the presence or absence of fine particles of clay which produce sedimentation, and especially on the amount of oxygen present in the water, which determines the character of the bacteria which nourish in it. If there is an abundance of oxygen, those bacteria which require it for their growth will multiply and consume the organic matter
187 to the exclusion of other forms. Such bacteria are called aerobic, that is, air loving bacteria, and among these are nitrifying organisms, which organisms are the best natural means of purifying the water. It will be seen that the conditions here set forth are possibly more completely present in the Mississippi River water, such as we have, than any other body of water in the world, and are certainly more completely absent in cistern water, deep or shallow well water, and surface water when at rest.

But in arriving at a conclusion as to the purity or impurity of a water supply, we cannot rely entirely upon the chemist and bacteriologist. We must consider mainly the sanitary effect upon the individuals of the community. As I have already stated, it is a well known fact that practically the only diseases produced by drinking are simple diarrhea and typhoid fever, the latter being, if not the more common, the much more serious. Before condemning the Mississippi river as a wholesome water supply we should consider the history of this disease, especially as to place. It is a well known fact that the most malignant cases of typhoid fever and the most violent epidemics of this disease occur in mountain regions, where the water supply is obtained from sparkling wells and springs. When we come to our own State we find that typhoid fever prevails much more extensively in the pine regions where well water is used, than in the western section along the course of the Mississippi where the supply is obtained from that stream. Since my residence in the city of Vicksburg extending over a period of more than five years, I have seen more than fifty cases of typhoid fever. Without a single solitary exception all of these cases used water from cisterns, and only used both hydrant waterworks water and cistern water. We could not ask for better evidence that our water supply is not polluted than that we have not now nor have we ever had an epidemic of typhoid fever.

More than fifteen years of my professional life was spent in the eastern portion of the State, where the communities obtain their water supply from cisterns and wells. During that time I am sure that I treated from twenty-five to one hundred cases of typhoid fever annually. In one community that used well water exclusively, I had on hand at one time twenty-five cases of typhoid fever. Coming

from that section to this, I was deeply impressed by the contrast and could attribute it to no other cause save the wholesomeness of Vicksburg's water supply.

If this water did not produce disease before its impurities, if it had any, were removed by filtration, it certainly will not produce disease now.

Ans. X Int. 1. I would judge it to be about three fourths of a mile.

Ans. X Int. 2. Yes.

Ans. X Int. 3. I cannot.

Ans. X Int. 4. I cannot.

Ans. X Int. 5. My impression is that the greater part of
188 the Yazoo river passes through a delta country, but it is not true that the waters of the Yazoo, nor any other water, produces malarial diseases.

Ans. X Int. 6. My information is that a sewer for storm water runs for some distance under Washington street in the city of Vicksburg, and that it empties into the Yazoo river some two miles north of the intake pipe of the water works company.

Ans. X Int. 7. I have no information on this question.

Ans. X Int. 8. My information is that this sewer under Washington street was intended solely for storm water and is constructed of brick. This being the case, I would not suppose that the city of Vicksburg would allow offal and excrement from watercelosets and from other sources to enter it at all.

Ans. X Int. 9. The general direction of the surface drainage of the city of Vicksburg is westward for the larger part of the said city and is within two miles of the intake pipe of the waterworks company.

Ans. X Int. 10. I have no knowledge of the extent of the contamination of the water of the Yazoo river by sewerage.

Ans. X Int. 11. I have observed the course of the water leaving the Yazoo canal,, and entering the Mississippi river, and my opinion is that very little, if any, of that water is taken and used by the waterworks company.

Ans. X Int. 12. The character and quality of the water as to wholesomeness prior to the installation of the filter plant, I can only judge by its sanitary effect upon my patrons, which was the same as it is now, and that effect goes to show that it was a wholesome and healthful water.

Ans. X Int. 13. The wholesomeness of the water since the installation of the filter plant, is all that could be desired by any reasonable community.

Ans. X Int. 14. I judge it was, since it comes to me in as good condition as I could desire.

Ans. X Int. 15. I do not know.

Ans. X Int. 16. I do not understand the question. The water since the installation of the filtering plant has, as a rule, come to me clear and sparkling, without any odor or scent, and only a few times has it appeared a little cloudy; never, from my hydrant, have

I observed it muddy. I have never observed that the water has been contaminated with any chemicals.

Ans. X Int. 17. I have made none.

Ans. X Int. 18. I have made no tests and have already answered as to the quality of its wholesomeness.

Ans. X Int. 19. I think it is.

Ans. X Int. 20. ——.

Ans. X Int. 21. ——.

Ans. X Int. 22. ——.

Ans. X Int. 23. ——.

Ans. X Int. 24. I have made no chemical or bacteriological
189 tests of this water; but my observation as to its use with my patrons is that it is wholesome for all domestic purposes.

Ans. X Int. 25. ——.

Ans. X Int. 26. I do not know.

Ans. X Int. 27. I do not know.

Ans. X Int. 28. I do not know that it was allowed to remain in settling basins.

Ans X Int. 29. I do not know.

Ans. X Int. 30. Up to the time of the installation of the filter plant I always filtered my drinking water, whether it came from the hydrant or the cistern. I did this as an additional precaution against diseases conveyed by drinking water. Since the installation of that plant, I have discarded my cistern water entirely, for drinking purposes, and have ceased to filter the hydrant water.

Ans. X Int. 31. Every town on the Mississippi river that gets its water supply from that stream takes it from a point below every other town above it. As to whether their intake pipes enter the stream below or above the sewer outlets, I do not know. I have read, however the following statement made by Thomas M. Koon, M. D. health officer of Grand Rapids Michigan.

"Grand Rapids is a city where typhoid fever is endemic. In looking over the records for the ten years from 1892 to 1902, inclusive, I find that during that period typhoid has been reported to the board of health every month except thirty-three. During that period there have been three hundred and eighteen deaths with nine thousand nine hundred and eight cases reported. In case all of the typhoid fever was reported, our death rate would be about seventeen per cent. Rather than accept that, we will allow our physicians to go on record as being negligent in reporting their cases. Allowing a death rate of ten per cent. we have had three thousand, one hundred and eighty cases, an average of three hundred and eighteen per year, with an average death rate of thirty-one and eight-tenths per cent. The death rate from all diseases in Grand Rapids from all diseases is lower than the average city of its class. From typhoid fever it is much higher. It is clearly evident that something is radically wrong. The public water supply for our city is taken from the Grand river. Above the intake pipe are several large factories, and the Michigan Soldiers' Home, all of which pour their sewerage in to the river. The river water is not filtered in any way. It has been customary to point to Grand River water

as the chief cause of typhoid fever in Grand Rapids. During the past summer our board of health has been collecting data in regard to the water supply of our city. From a careful canvass made of our entire city, five thousand nine hundred and sixty-nine wells were listed, five thousand five hundred and thirty five of which were in use supplying about sixty thousand people. Therefore, the majority of our people are drinking well water. The remaining thirty-five thousand of our people use bottled spring water or Grand River water. There are six thousand, three hundred privy
190 vaults in our city. Six thousand three hundred privy vaults scattered among five thousand five hundred and thirty-five wells certainly invite contamination of the drinking water. Out of sixty four cases of typhoid fever investigated, during the past fall, we found that fifty five were drinking well water. The city bacteriologist reported only five of the wells fit for use. As you will see, our city is honey-combed with vaults and cess pools. There can be no doubt but what the soil is being constantly polluted. The well water naturally must be unfit for use. This undoubtedly accounts for the larger part of our typhoid fever."

The foregoing quotation is taken from a paper read by Thomas M. Koon, M. D., health officer of Grand Rapids, Michigan, at the seventh general conference of health officials, Ann Arbor, Michigan, Jan. 9th, 1904, and published in the Michigan Monthly Bulletin of Vital Statistics of December, 1903, which is published at Lansing, Mich. by the State board of health with the co-operation of the Department of State.

Ans. — Int. 32. There has been more typhoid fever in Vicksburg during the year 1903 in my practice than during any other year since my residence in this city; but not a single case of this disease has occurred with any patron of mine who used hydrant waterworks water exclusively.

Ans. X Int. 33. I do consider Vicksburg a healthful city, and I do think that the absence of diseases in this city commonly conveyed by drinking water, — the result of the excellency of the water which is now and has heretofore been furnished by the waterworks company.

Ans. X Int. 34. As to the diseases caused by drinking water, there can be no other cause for the good health of the city of Vicksburg than the excellency of the water supply. So far as relates to other diseases, there are other reasons for the good health of the city.

Ans. X Int. 35. I think not in every particular.

Ans. X Int. 36. I cannot draw this comparison, since I do not know the limit of the water supply.

Ans. X Int. 37. I do not think the health conditions of the district north of the city of Vicksburg are as good as in the city of Vicksburg.

Ans. X Int. 38. There were a number of cases of typhoid fever in Vicksburg during the summer and spring of 1903. I can base my opinion only on my individual observation and experience. We know that typhoid fever is usually conveyed by drinking water; I know that every case of typhoid fever coming under

my observation used cistern water to the exclusion of hydrant water works water, except one. This patient used both cistern and hydrant waterworks water. From this, I can only conclude that the cause of such condition is the impure cistern water.

H. H. HARALSON.

191 Sworn to and subscribed before me, this 23 day of February, A. D. 1904.

J. H. SHORT,
Notary Public. [SEAL.]

The above and foregoing has the following indorsement thereon, to-wit: 41. Equity—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of Vicksburg. Deposition of H. H. Harralson. Filed Feb'y 29, '04. L. B. Mosely, clerk. J. H. Short, D. C.

Interrogatories and Cross-interrogatories Propounded to T. C. Thomas.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

No. —.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It is understood and agreed that the answers of T. C. Thomas to the appended interrogatories and cross interrogatories when made under oath before some officer authorized by the State of Mississippi to administer oaths may be read in evidence on the hearing of the above entitled cause subject only to objections for irrelevancy and incompetency; notice and commission and all matters of form are hereby expressly waived; the certificate of the officer taking the depositions shall be conclusive evidence of his authority to administer oaths and formal captions and certificate of such officer is expressly waived and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscribed before me this — day of ——" and signed by the officer with dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Complainant.
W. J. VOLLER &
BRYSON & DABNEY,
Attorneys for Defendant.

Interrogatories to be Propounded to Capt. T. C. Thomas.

Int. 1. State your name, age, residence and occupation.

Int. 2. If you state that you are captain of the Corps of Engineers of the United States, please state if you know when the United States Government first opened up what is known as the Yazoo canal by which the waters of the Yazoo river flow through the same.

192 Int. 3. If you can, please describe the course of this canal with reference to the city of Vicksburg, and if you have a map of the same showing the construction and course of the canal please file the same herewith to your deposition and mark it Exhibit "A."

Int. 4. Please state, whether, or not, there is an underground gutter emptying into said canal within the city of Vicksburg and if so, at what point does it empty into said canal and indicate the point on the map filed with your deposition; and state if you know what it discharges and what is it used for.

Int. 5. Please state if you know the location and distance of the pumping station and intake pipes of the water works company with reference to the outlet of the underground gutter above mentioned and indicate the same on the map if you can?

Int. 6. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this case? If yet, set forth the same fully and at large in your answer.

Cross-interrogatories.

X interrogatory 1. State the distance, as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtains its supply of water northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtains its supply.

X Int. 3. Can you say whether the water discharged from the Yazoo river is good and wholesome, and fit for all purposes of domestic or manufacturing consumption.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution?

X Int. 5. State if it is not a fact that for the greater part of its course, the Yazoo river does not pass over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is the fact, state if it is not true that the water in Yazoo river is generally considered bad, and that if it is used for drinking purposes, it is likely to produce malarial diseases.

X Int. 6. State if it is not a fact that the sewerage from a large

sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the waterworks company.

X Int. 7. State as fully as you can the size and length of the said Washington Street sewer.

X Int. 8. State as fully as you can the extent of sewerage
193 carried by said sewer, and discharged through it into the Yazoo river, especially state if it is not a fact that nearly all of the business houses on Washington street have their water closets discharged into said sewer and particularly, does not the offal and excrement from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish club, Elks' club, Opera house, jail, St. Francis Xavier's college, Vicksburg sanitarium, city hall, and U. S. postoffice, and practically all of the dwellings on South street from Adams street west to Washington street, drain into and discharge through said sewer.

X Int. 9. State whether the said sewer was constructed before or since the water works plant was installed, and if before state as fully as you can about what year the said sewer was constructed.

X Int. 10. State what change has taken place since the construction of the waterworks in regard to point of discharge of the Yazoo river.

X Int. 11. State what change, if any, in regard to the opportunity of sewerage contamination of the water supply has taken place.

X Int. 12. State as fully as you can the general direction of the surface drainage from the city of Vicksburg, and particularly whether or not it is westward from the larger part of said city into the Yazoo river and Mississippi river, and along such part of the same as is within two miles of the intake pipe of said company.

X Int. 13. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage, and if you state that you have such knowledge state as fully as you can the extent of the contamination, and whether the water from said Yazoo river is good and wholesome and fit for domestic uses.

X Int. 14. State whether any part of the water taken and used by said water works company comes from the Yazoo river, and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

X Int. 15. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicksburg, and other consumers by said water works company, prior to the installation of the filter plant now in use.

X Int. 16. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 17. State as fully as you can whether all water so furnished as aforesaid, since the installation of said filter plant has been passed through said plant, and if you state that it has not, state how often

said company has furnished such unfiltered water, and how long at a time.

X Int. 18. State whether such unfiltered water was pumped from basins containing sediment from water previously treated with chemicals before being passed through the filter.

X Int. 19. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals, which had
194 been used in preparing water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers, and its odor and scent if it had any, since the installation of the filter plant, and whether the same was not charged with mud, and other insoluble matter in excess of what it was when first taken from the river.

X Int. 20. State any tests or examinations you may have made with unfiltered water since the installation of the said filter.

X Int. 21. State the quality of the water supply used by said company when it is first pumped into its basins by said company, when it is first pumped into its basins and before the same has been treated in any way with chemicals or passed through the filter.

X Int. 22. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome and fit for all purposes of domestic or manufacturing consumption in its original state, as it is taken from the source of supply, and before it is treated in any way by chemicals or passed through the filter.

X Int. 23. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reasons in full.

X Int. 24. If you cannot state that it is free from contamination state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 25. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good, wholesome water, state why you have not considered the same good and wholesome.

X Int. 26. If you cannot state that said water as taken from the source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 27. State as fully as you can to what tests or examinations you have put such water to in its original state as taken from the source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes, state if you have any knowledge of the same in regard to uses not coming under any of your tests or examination.

X Int. 28. If you have stated in answer to any of the foregoing interrogatories that the water as taken by said company from the source of supply falls short of the standard of purity above mentioned, viz. "that it shall be free from all sewerage, contamination, and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption," state the particular quality or

ground wherein it falls short of such standard, and to what extent it fails or has failed to meet the required standard.

X Int. 29. State whether said company, prior to the installation of its filter treated the said water in any way by chemicals or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

195 X Int. 30. State whether said company maintained settling basins at its pumping station, and pumped the water from its source of supply first into such basins before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins, and how long the water was permitted to remain therein before pumping the same into the mains for the use of consumers.

X Int. 31. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 32. State, if you know, how long said basins were allowed to stand without having the sediment from such water removed therefrom.

X Int. 33. State whether or not you filtered, or in any other way treated the water supplied you by said company, or any part thereof, before using the same, and if you state that you did, state why you found it necessary to filter or otherwise treat the same.

X Int. 34. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your reading or conversation, you have ever heard of such that was supplied with water taken from a stream which flowed through or by such city, town or village, at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know, have seen or heard of such city, town or village, give the name and location of such.

X Int. 35. State, if you know, anything of the plant, that is, machinery, ways, means and appliances used by said water works company, in obtaining a supply of water and distributing the same to its several consumers, and if you state that you do, state and describe its machinery and appliances used in obtaining water from the source of supply and putting the same into its settling basins, what is the size and number of lines of pipe in use by said company, from its pumphouse to the Mississippi river, what is the number and size of the engine used in lifting or pumping water from the said Mississippi river into the settling basins of said company, what is the capacity per day for taking water from the said Mississippi river, and putting the same into the settling basins now in use by said company, does the pumping engine or engines used by said company in so taking and lifting water from said river into said basins require to be moved or shifted as the said river rises or falls, and if you say it does, state what rise or fall of said river requires the same to be so shifted and state the time required for such shift, state if the machinery, ways or appliances now and heretofore in use by said company in lifting its water from the

river and supplying the same in its basins is in duplicate so that one set can be kept in operation while the other is being shifted on the river bank.

W. J. VOLLOR AND
BRYSON & DABNEY,
For Def't.

196 *Letter from T. C. Thomas.*

UNITED STATES ENGINEER OFFICE,
VICKSBURG, MISSISSIPPI, *February* 15, 1904.

Mr. Joseph H. Short, U. S. Commissioner, Vicksburg, Miss.

SIR: I return herewith a paper left at this office by you the 12th instant.

The work of improving the mouth of the Yazoo river and harbor at Vicksburg, Miss., is carried on under the direction of the Secretary of War and supervision of the Chief of Engineers, U. S. Army, by Captain Chas. S. Bromwell, corps of engineers, stationed at New Orleans, Louisiana.

I am a civilian employee and am forbidden to furnish any information from the records of this office, which, under the regulations may be obtained only from the proper officers of the War Department.

Very respectfully,

T. C. THOMAS,
Ass't Engineer.

(1 enclosure.)
Mo. Yazoo 133.

I, J. H. Short, a notary public in and for the city of Vicksburg, Warren county, Miss. hereby certify that the foregoing letter was delivered to me in person by said T. C. Thomas.

[SEAL.]

J. H. SHORT,
Notary Public.

Feb'y 29/04.

The above and foregoing has the following indorsement thereon, towit: No. 41. Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Interrogatories and cross-interrogatories propounded to T. C. Thomas—unanswered—Filed Feb'y 29/04. L. B. Moseley, clerk. J. H. Short, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Deposition of Abraham L. Metz.

In the Circuit Court of the United States *in* the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed and understood that the answers of A. L. Metz to the appended interrogatories and cross-interrogatories when made under oath, before some officer authorized in the State of Louisiana
197 to administer oaths, may be read on the hearing of the above entitled cause in evidence, subject only to objections for irrelevancy and incompetency. Notice, commission and all matters of form are hereby expressly waived. The certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal caption and certificate of such officer *is* expressly waived, and the certificate shall be sufficient if in the following form: "Sworn to and subscribed before me this — day of ——" and signed by the officer, with dates properly filled in.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Solicitors for Complainant.
W. J. VOLLOR AND
MAGRUDER, BRYSON & DABNEY.
Solicitors for Defendants.

Interrogatory No. 1. Please state your name, age, residence, and occupation.

Int. 2. If you say you are a chemist, please state how long you have been a chemist.

Int. 3. To give the court an idea of the extent of your information please state what opportunities and experience, if any, you have had in analysis and examination for determining the wholesomeness of waters.

Int. 4. Please state whether or not you came to Vicksburg on the 23d. day of April, 1903, and if so, at whose instance, did you come and in what capacity?

Int. 5. If you say you came at the instance of the Vicksburg Water Works Company to analyze the Mississippi River water, at Vicksburg, please state what you did and give the result of your analyses of water, both in the popular and in technical language as to its wholesomeness, and fitness for manufacturing purposes, and file with your answer hereto an analysis of the same as made by you.

Int. 6. Did you make any other analysis of any other waters while you were here, and if so, state where you got the water and give the result of your analysis.

Int. 7. Please state which of the two waters analyzed by you was the most wholesome in your opinion.

Int. 8. Please state whether or not you have ever made any analysis of water of the Mississippi river at any other point than Vicksburg with a view of determining its wholesomeness; and if so what was the result of your examination.

Int. 9. Do you know of your own knowledge what reputation the Mississippi River water has for healthfulness or wholesomeness as used on ships and vessels?

Int. 10. If you have answered the preceding interrogatory in the affirmative, please state fully the sources and extent of your knowledge and information and also state what that reputation is.

198 Int. 11. Are you familiar with the recognized authorities on the subject of the wholesomeness of water? If so, please state the standard of wholesomeness recognized by such authorities and furnish for comparison reliable abstracts from the official reports or writings from such recognized authorities.

Int. 12. If you know, please state what kind of a stream is the Mississippi river.

Int. 13. What was the relative difference, if any, between the amounts of suspended matter and organic nitrogenous matter and bacteria in the samples of water taken by you in midstream, at the intake pipe, from the settling or storage basin, and the hydrant in the city.

Int. 14. If you say there was a difference, please state fully what that difference was, its extent, and its cause.

Int. 15. What effect, if any, does the suspended matter have upon the human stomach?

Int. 16. State anything else you may know of interest to either party in this suit.

Int. 17. The complainant has in operation what is known as the "Jewel filtration process," by which it clarifies and purifies its water now delivered to the city. Please state if you know whether or not this process was in operation when you were here collecting samples of water?

Cross-interrogatories.

X Interrogatory 1. If you should state in answer to the direct interrogatories that you have analyzed samples of water taken from either the basin at the water works plant, or from any of the pipes on the line of mains of the Vicksburg Water Works Company state whether or not you were present when such samples of water were taken from said basin or from said mains, and if not, state how you came into possession of the water analyzed by you.

X Int. 2. State from what point or points on the mains your samples of water were obtained.

X Int. 3. State whether the filtration plant now in use by the company was in operation at the time your samples were obtained.

X Int. 4. State, if you know, whether the samples analyzed by you were of the same quality as that usually furnished to the mayor

& aldermen of the city of Vicksburg, and the inhabitants of said city.

X Int. 5. State, if you know, whether the Vicksburg Water Works Company puts any chemicals or other foreign substance of any kind into the supply of water after the same has been taken from the Mississippi river, or other sources before pumping such water into its mains for the use of its consumers, and if you state that said water company does put such chemicals or other foreign substances into its supply of water, state what such chemicals or sub-
199 stance so used is, and state its effect or chemical reaction upon the water, or upon any impurities that may be in the same.

X Int. 6. State whether on not you consider the water used by said company and delivered by it through its mains to the mayor and aldermen of the city of Vicksburg, and to the inhabitants of said city good and wholesome, and if you state that you so consider it state whether or not you consider the said water good and wholesome as it is taken from the source of supply and before it is treated with chemicals and before it is passed through the filtration plant, and if you state that you do not, give your reasons for so stating.

X Int. 7. State, if you know, the source of supply of water used by the said company, particularly whether or not the water used by the said water works company, and supplied to the said mayor & aldermen of the city of Vicksburg, and the inhabitants of said city is obtained from the Mississippi river or not and if you state that it is so obtained, state, if you know, whether or not any part of the same is from water discharged from the Yazoo river.

X Int. 8. State, if you know, whether or not the said supply of water above mentioned is in any way contaminated, or polluted by sewerage matter or other effete matter of offal from the city of Vicksburg.

X Int. 9. State whether or not you have analyzed any water taken from the Yazoo river, in front of the city of Vicksburg, before the water passed the intake pipe of said water works company, but within a mile of said intake pipe, and if you state that you have, state the quality of the same, and whether on not you found any sewerage pollution in the said waters.

X Int. 10. State whether or not you have analyzed any water taken from the Mississippi river at or near the point from which the supply of water taken and used by the Vicksburg Water Works Company is obtained, and if you state that you have give the analysis of the same, and state whether or not you consider it good and wholesome.

X Int. 11. If you state that any of the water from the Vicksburg water works Company analyzed by you was not good and wholesome, state the purposes for which you would say it is not good and state your reasons for saying that it is not wholesome.

X Int. 12. State, if you know, whether or not all the water supplied and furnished by the Vicksburg Water Works Company, either to the mayor & aldermen of the city of Vicksburg, or to the inhabitants of said city is treated and passed through the Vicksburg water works filter, the same as the water analyzed by you was treated

and filtered, and if you state that you do not know, state whether or not you can say that the water usually furnished by said company to said mayor & aldermen and to the inhabitants of said city of Vicksburg, is of the same quality as that analyzed by you, and if you cannot say that it is, state whether you know as a matter of fact whether the water usually and ordinarily furnished by the
200 Vicksburg water works to the said mayor and aldermen of the city of Vicksburg, and the inhabitants of said city is good and wholesome.

X Int. 13. State whether or not you analyzed any water from said water works mains or hydrants prior to the installation of the filtration plant now in use by said company, and if you state that you did, give the analysis of the same.

X Int. 14. If you have analyzed any samples of water taken from the basins of said company before the same had passed through the filtration plant give the analysis of same.

X Int. 15. If you have used the expression "good and wholesome" in your answer to any of the above interrogatories, state the exact meaning or definition of the said term or expression as used and understood by you.

X Int. 16. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answers to Interrogatories.

Interrogatory No. 1. Abraham L. Metz, 39 years, No. 9, Rosa Park, New Orleans, La. Professor of chemistry medical dep'r't Tulane University, of La. Official chemist, city of New Orleans, La.

Int. 2. Have been following the profession of chemistry since my graduation in 1887, or a period of seventeen years.

Int. 3. I have been connected with the medical dept. Tulane University of La. since 1887 as follows: From 1887 to 1893, as demonstrator of pharmacy; from 1893 to 1896, as demonstrator of chemistry; from 1896 to date, as professor of chemistry; from 1889 to 1901, as chemist to the board of health, State of Louisiana, from 1899 to 1901, as chemist to the board of health, city of New Orleans; from 1890 to date as official chemist, city of New Orleans.

During my connection with the health boards above mentioned, and as official chemist of the city of New Orleans, I have had frequent occasions to examine and analyze water and water supplies in my official capacity.

Int. 4. I went to Vicksburg as an expert on water matters. I was in Vicksburg April 23d, 1903. I went to Vicksburg by request of Mr. M. O. Crumpler, treas., and manager of the Vicksburg Water Works Co.

Int. 5. On my arrival in Vicksburg, I reported to Mr. Crumpler, and requested him to place at my disposal a man, or men, who would be under my supervision and direction, so that I would have

every facility to personally collect samples of water from such place or places as I deemed requisite to the investigation of the water supply of Vicksburg. I would not accept waters which were tendered me, but insisted that I collect the water, for then only would I be in a position to give an opinion of facts as I found them.

201 Samples of river water were collected by me from midstream; from the intake pipe of the Vicksburg Water Works Co., from the storage basin of the V. W. W. Co. and from a hydrant at Bazinski's stable.

The samples of water from these places were collected by me in duplicate, one sample of each collection for sanitary analyses, and one sample for bacteriological examination. The cultures for the bacteriological examination of the various samples of water (collected by me) were put to culture or growth on media, in Vicksburg and carried by me from Vicksburg to this city for further examination.

The various samples of water for sanitary analyses were collected by me corked, and the cork tied and knotted in a peculiar manner by me, and shipped by express to this city. On the arrival of the sample here, I examined the knots to ascertain whether or not they had been tampered with; finding they had not been disturbed, I proceeded with the examination, with the following results:

Tabulated Report of Sanitary Analyses of Mississippi River Water Collected at Vicksburg April 23d, 1903.

Results expressed in parts per 1,000,000 constituents.	Water taken from midstream.	Water taken at intake pipe, V. W. W. Co.	Water taken from storage basin, V. W. W. Co.	Water taken from hydrant, Bazinski's stable.	Cistern water from residence of Mr. McCabe.
Suspended matter	185.000	200.000	21.300	31.540	0.000
Dissolved matter	189.000	187.960	189.640	184.030	3.6000
Oxygen consumed	2.300	2.500	1.300	1.800	0.700
Chlorine as chlorides	3.000	8.000	8.000	8.000	1.500
Nitrogen as albuminoid ammonia	0.120	0.135	0.040	0.150	0.063
Nitrogen as free-ammonia	0.000	0.010	0.000	0.100	0.020
Nitrogen as nitrites	0.000	0.000	0.000	0.000	0.000
Nitrogen as nitrates	0.050	0.055	0.042	0.100	0.120
Number of bacteria per cubic centimeter	150.	186.	65.	108.	295.
No bacilli coli communis were	found in	any of	the above	waters.	

For the proper understanding of the analyses, I respectfully offer the following explanations.

All results are expressed in parts per 1,000,000, as recommended by the American Public Health Association.

Oxygen consumed.—This determination is considered to be a measure of the amount of carbonaceous organic matter contained in the water, and is in no sense a measure of the nitrogen content.

202 Nitrogen as albuminoid ammonia.—This determination is a measure of the amount of nitrogenous (albuminoidal) organic matter.

Nitrogen as free ammonia.—When the water is distilled, with a small quantity of sodium carbonate, a certain amount of ammonia is carried over with the distillate. This is called free ammonia, and is a measure of the amount of nitrogen in the form of ammonia which has been set free by the decomposition of the albuminoidal material through the action of bacteria and air.

Nitrogen as nitrites.—This shows a further step in the decomposition of the nitrogenous matter, and is indicative of the amount of nitrogen which has reached, or, is passing through the second stage of the process of oxidation.

Nitrogen as nitrates.—This indicates the amount of completely oxidized mineral nitrogen, *i. e.* which has passed from albuminoid form into mineral nitrates.

Chlorine as chlorides.—This element is present in water chiefly as common salt. In certain sections and localities, the amount of chlorine is a measure of sewage contamination.

The water supplied to the people of Vicksburg should be compared with the water taken from midstream taken as a standard.

It is my opinion that the water taken at Vicksburg April 23d, 1903, will compare favorably with the most critical standards laid down by various authorities on water supplies.

Int. 6. I did. I obtained a sample of water from the underground cistern on the premises of Mr. McCabe. The analysis is given on page two of these interrogatories. It will be found in column five.

Int. 7. From the standpoint of the sanitary analysis, they are about equal so far as wholesomeness is concerned. From the standpoint of a bacteriological comparison, the river water is far superior to the underground cistern water. Note that the number of bacteria is nearly 100 % more in the underground cistern water than in the river water taken from midstream.

Int. 8. I have made numerous examinations, and analyses of the Mississippi River water, as furnished to the people of New Orleans. These analyses were made from various sources at different points on the river front, and from hydrants in different sections of the city. I have always found the water wholesome, except when contaminated by local conditions and sources. As soon as the pollution was stopped, the water after a few days would assume its own degree of purity. The only objection that can be made to an unpolluted Mississippi River water is the silt it holds in suspension.

Int. 9. I know from personal observation with captains aboard ship, and from personal observation that preference is given Mississippi River water for use aboard ship. It is said that the water does not undergo the stage of putrefaction, which is common to other waters.

Int. 10. Answer in the preceding question.

Int. 11. I am acquainted with the writings of most of the
203 recognized authorities on the subject of the wholesomeness of water. Prof. A. B. Leeds, in his report to the water department of the city of Wilmington, for 1882, which statement is the outcome of his experience in the analyses of American waters, says: I would venture to propose as an aid in determining whether a water supply derived (as most of our American city water supplies are) from a flowing stream is good and wholesome, the following highest limits as a standard of purity.

Albuminoid ammonia.....	0.100 to 0.280 per million.
Free ammonia.....	0.000 to 0.120 " "

Wanklyn's standards of organic purity are as follows:

"Class 1. Water of extraordinary purity, yielding from 0.000 up to 0.050 part of albuminoid ammonia per 1,000,000. This class comprises the most carefully distilled waters and highly filtered waters, both natural and artificial. Occasionally a river water in its unfiltered condition falls into this class."

Class 2. Comprehends the general drinking waters. It gives from 0.050 to 0.100 per 1,000,000. Any water falling fairly into this class is safe organically."

Class 3. Comprehends the dirty waters, and is characterized by yielding more than 0.100 parts of albuminoid ammonia per 1,000,000.

These figures are quoted by many authorities. I must say that they are exceptional figures, as I have seen waters which were thoroughly good for dietetic purposes, which yielded much larger results than what the standards laid down by these authorities call for.

You will note, however, the analyses of the Vicksburg water, can be well judged by these very critical standards.

Other authorities who come to the same conclusions may be mentioned:

Mason, Water Supply, Chemical and Sanitary.
Harrington, Practical Hygiene.
Notter: Treatise on Hygiene.
Thresh: Water Supplies.
Parkes. Hygiene.

I could catalog a library which deals with this all important subject. Regarding the value of nitrites and nitrates in determining the potability of water, I quote from Parkes' Hygiene, p. 709, 8th edition. "Nitrites indicate the presence of organic matter undergoing change, it is either a stage of direct oxidation of such matter, progressive or arrested or a retrogression from the form of nitrates in consequence of the latter yielding up its oxygen. Pure water ought to be quite free from nitrites, and ought to show only traces of nitrates,—the limit being about 0.320 per 1,000,000. In this connection I would state that the Mississippi River water contains nitrates as a natural constituent of the water. The water taken from

midstream contains nitrates, but in very small proportions
204 nor is this to — wondered at for the simple reason that it is common to find nitrates in all soils especially sands, gravels and ferruginous clays. These substances form the silt and clay found in the suspended matter of the Mississippi River water.

Int. 12. The Mississippi river is a silt bearing stream.

Int. 13. There is quite a decided difference between the amounts of suspended matter in the different samples examined. The water taken from midstream and the intake pipe of the supply plant contains from six to nine times as much suspended matter as does the water taken from storage basin and Bazinski's hydrant. The number of bacteria show a decrease in the storage water, and hydrant water.

Int. 14. The tabulated report will show the difference at a glance. A comparison will show that about 88.44 per cent. of the suspended matter has been removed by subsidence. The decrease of bacteria is accounted for by the fact that the suspended matter attracts the greater part of the organic matter contained in the water, so that its removal (the suspended matter) either by subsidence or filtration will remove a great portion of the organic matter and bacteria.

Int. 15. In regard to this question would say, that it is not known that water containing these amounts of suspended matter has made anyone seriously sick. It is believed that the suspended matter *per se*, is not a direct cause of disease, though it is quite possible, that slight digestive derangement of a temporary nature may occur in those who are not accustomed to the water and drink it freely.

Int. 16. I regret I have not the time to give you full quotations from the various authorities on the subject of water supplies.

Int. 17. The filter was not in operation when I visited your city. Work was being done upon the filter, and at the time of my visit was far from being completed.

[SEAL.] F. C. MARX, *Not. Pub.*

A. L. M.

Answers to Cross-Interrogatories.

X Int. 1. The samples of water were collected by me in person. Mr. Crumpler only furnished me with such help as I called for *i. e.* a man to act as boatman, so that I could collect the samples of water from midstream, and from the intake pipe of the water works Co. Mr. Crumpler at my request, also furnished me with a driver, who took me from place to place at my request for samples of water. I personally collected all samples of water. The samples were in my possession until I placed the peculiar knot upon the corks and bottles, and I saw to it that these knots were not disturbed or tampered with, when they reached me. The waters which were examined bacteriologically did not leave my hands. I came to Vicksburg prepared for this special bacteriological work. The initial work of growing the bacteria was commenced in your city.

X Int. 2. From midstream; from the intake pipe of the
205 water works Co., from the storage basin of the water works Co., from a hydrant in Bazinski's stable.

X Int. 3. The filtration plant was not in operation.

X Int. 4. I do not know.

X Int. 5. To my knowledge, no chemicals were used at the time that I visited your city. I must confess that I looked for some unknown to Mr. Crumpler, but I did not see even a vestige of a chemical anywhere in sight.

X Int. 6. In answer to this interrogatory would say, that in pronouncing the water good and wholesome, I was guided entirely by the results of the sanitary analysis and bacteriological examinations.

The results of the sanitary analysis and bacteriological examinations proved that the samples of water collected by me were good and wholesome.

X Int. 7. I know most positively that the water source of the water supply of your city is obtained from the Mississippi river. I know that the Yazoo empties into the Mississippi river.

X Int. 8. I know from personal observation that the sewerage of Vicksburg is at least in part, thrown into the Yazoo, above the intake pipe of the water works Co. I also know that the waters to some distance at the outfall of the sewer is contaminated. This later statement is made in a most positive form. I made it a point while in your city to study the conditions of sewerage pollution, and I took samples of water from a distance of about 10 feet from shore, and I have examined this water from a sanitary and bacteriological point of view.

X Int. 9. In my judgment the water was collected within two miles of the intake pipe of the water works company. The analysis and examination shows decided sewerage pollution. I herewith give results of said examination.

Analysis Expressed in Parts per 1,000,000.

Suspended matter	226.180
Dissolved matter	261.920
Oxygen consumed	15.000
Chlorine as chlorides	21.120
Nitrogen as albuminoid ammonia	0.900
Nitrogen as free ammonia	0.540
Nitrogen as nitrites	0.420
Nitrogen as nitrates	0.690
Phosphates	Heavy traces.
Number of bacteria per cubic centimetre	22.400

Fifty per cent. of the bacteria belonging to the class known as the *bacilli coli communis*, which bacteria comes from the intestinal canal of animals.

206 X Int. 10. You will find answer to this interrogatory on page two (2) of the direct interrogatories.

X Int. 11. All the waters examined by me chemically and bacteriologically are good and wholesome, the only one, which was not wholesome is the sample collected by me from the Yazoo branch, and

this water must be considered as a little better than diluted fæces and urine.

X Int. 12. I do not know anything about the Vicksburg Water Works filter, as the same was not in use, in fact was not finished when I was in your city. The difference in quantities of suspended matter, as well as organic matter and bacteria, I attribute to the excellent arrangements of the storage basins, with their baffles and overflow, the water that was collected by me and analyzed by me certainly was good and wholesome.

X Int. 13. I did. Analysis of the hydrant water is given on page two, of my answers to the direct interrogatories.

X Int. 14. I did analyze the water from the storage basins. You will find results of said examination on page two of my answers to the direct interrogatories.

X Int. 15. By the expression "good and wholesome" is meant, water that is fit for drinking and domestic purposes, the latter including its fitness also for cooking and other household uses. The water is fitted for boiler and technical uses as well.

X Int. 16. I want to emphasize the fact that the city of Vicksburg is menaced with danger to a serious degree by sewerage contamination from the sewer outfall above the water company's plant. It is a condition which should not be trifled with, for no community, in my opinion, has the right, nor can they afford to take such chances as threaten your city, for as your city grows in population, the danger will become correspondingly greater. The location of the sewer discharge, a comparatively short distance above the intake pipe of the waterworks is to be strongly condemned. The location of the sewer outfall should be below the waterworks plant not above it.

A. L. METX, *M. D.*

Sworn to and subscribed before me, this 8th. day of January, 1904.

[SEAL.] FRED C. MARX, *Not. Pub.*

A. L. M.

The above and foregoing has the following indorsement thereon, to-wit:—41 Equity. United States circuit court southern district of Mississippi.—Vicksburg Water Works Company *vs.* Mayor & Aldermen of the City of Vicksburg, Mississippi.—Deposition of Dr. A. L. Metz, taken by Frederic C. Marx a notary, commissioner of deeds, 206 Barone street.—Filed Jan'y 9th, 1904. L. B. Moseley, clerk, J. H. Short, D. C.

207 *Deposition of Richard W. Jones.*

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed and understood that the answers of R. W. Jones, to the appended interrogatories and cross interrogatories, when made under oath before some officer authorized in the State of Louisiana to administer oaths, may be read in evidence on the hearing of the above entitled case, subject only to objections for irrelevancy and incompetency. Notice, commission and all matters of form are hereby waived expressly. The certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal caption and certificate of such officer is expressly waived, and the certificate shall be sufficient if in the following form:

"Sworn to and subscribed before me, this — day of ——, #—," and signed by the officer, with dates properly filled out.

HUDSON & FOX AND
SMITH, HIRSH & LANDAU,
Solicitors for Complainant.

W. J. VOLLOR AND
MAGRUDER, BRYSON & DABNEY,
Solicitors for Defendants.

Interrogatory 1. Please state your name, age, residence and occupation.

Int. 2. State how long you have been engaged in such occupation, and the opportunities you have had and the experience in analyzing waters, so far as potability is concerned, and its fitness for manufacturing purposes.

Int. 3. In order to furnish the court proper information upon the subject-matter of this question, please state fully the character and extent of your opportunities and experience.

Int. 4. State whether you have made any analysis of water at Vicksburg, for the Vicksburg Water Works Company, and if so, when?

Int. 5. State in detail the result of this analysis, both in popular and technical language.

Int. 6: State anything else you may know of importance to either party to this case.

Cross-interrogatories.

X Interrogatory 1. If you should state in answer to the direct in-
terrogatories that you have analyzed samples of water taken
208 from either the basin at the waterworks plant, or from any of
the pipes on the line of mains of the Vicksburg Water Works

Company, state whether or not you were present when such samples of water were taken from said basin or from said mains, and if not, state how you came into possession of the water analyzed by you.

X Int. 2. State from what point or points on the mains your samples of water were obtained.

X Int. 3. State whether the filtration plant now in use by the company was in operation at the time your samples were obtained.

X Int. 4. State, if you know, whether the samples analyzed by you were of the same quality as that usually furnished to the mayor & aldermen of the city of Vicksburg, and the inhabitants of said city.

X Int. 5. State, if you know, whether the Vicksburg Water Works Company puts any chemicals or other foreign substance of any kind into its supply of water after the same has been taken from the Mississippi river, or other source before pumping such water into its mains for the use of its consumers, and if you state that said water company does put said chemicals or other foreign substance into its supply of water, state what such chemicals or substance so used is, and state its effect or chemical reaction upon the water, or upon any impurities that may be in the same.

X Int. 6. State whether or not you consider the water used by said company and delivered by it through its mains to the mayor & aldermen of the city of Vicksburg and to the inhabitants of said city good and wholesome, and if you state that you so consider it, state whether or not you consider the said water good and wholesome as it is taken from the source of supply, and before it is treated with chemicals, and before it is passed through the filtration plant, and if you state that you do not, give your reasons for so stating.

X Int. 7. State, if you know, the source of supply of water used by the said company, particularly whether or not the water used by the said water works company, and supplied to the said mayor & aldermen of the city of Vicksburg, and the inhabitants of said city is obtained from the Mississippi river, or not, and if you state that it is so obtained, state, if you know, whether or not any part of the same is from water discharged from the Yazoo river.

X Int. 8. State, if you know, whether or not the said supply of water above mentioned is in any way contaminated, or polluted by sewerage matter or other effete matter or offal from the city of Vicksburg?

X Int. 9. State whether or not you have analyzed any water taken from the Yazoo river in front of the city of Vicksburg, before the water has passed the intake pipe of said water works company, but within a mile of said intake pipe, and if you state that you have state the quality of the same, and whether or not you found any sewerage pollution in the said waters.

X Int. 10. State whether or not you have analyzed any
209 water taken from the Mississippi river at or near the point from which the supply of water taken and used by the Vicksburg Water Works Company is obtained, and if you state that you have, give the analysis of the same, and state whether or not you consider it good and wholesome.

X Int. 11. If you state that any of the water from the Vicksburg Water Works Company analyzed by you, was not good for all purposes, or that the same was not wholesome, state the purposes for which you would say it is not good, and state your reasons for saying that it is not wholesome.

X Int. 12. State, if you know, whether or not the water supplied and furnished by the Vicksburg Water Works Company, either to the mayor & aldermen of the city of Vicksburg, or to the inhabitants of said city, and passed through the Vicksburg water works filter, the same as the water analyzed by you was treated and filtered, and if you state that you do not know, state whether or not you can say that the water usually furnished by said company to said mayor & aldermen and to the inhabitants of said city of Vicksburg, is of the same quality as that analyzed by you, and if you cannot say that it is, state whether you know as a matter of fact whether the water usually and ordinarily furnished by the Vicksburg Water Works Company to the said mayor & aldermen of the city of Vicksburg, and the inhabitants of said city is good and wholesome.

X Int. 13. State whether or not you analyzed any water from said waterworks mains, or hydrants prior to the installation of the filtration plant now in use by said company, and if you state that you did, give the analysis of the same.

X Int. 14. If you have analyzed any samples of water taken from the basins of said company before the same has passed through the filtration plant, give the analysis of same.

— Int. 15. If you have used the expression "good and wholesome" in your answer to any of the above interrogatories, state the exact meaning or definition of the said term, or expression as used and understood by you.

X Int. 16. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

210 In the Circuit Court of the United States in the Southern District of Mississippi, Western Division Thereof.

Answers to Interrogatories in the Case of The Vicksburg Water Works Company vs. Mayor and Aldermen of the City of Vicksburg.

Interrogatory 1. Richard W. Jones, age 66, residence University of Mississippi. Professor of chemistry in the University of Mississippi.

Int. 2. I have been professor of chemistry in the university 23 years. I have also taught chemistry in two other colleges. I graduated in the University of Virginia, and have studied in other institutes in this country, and somewhat in Europe.

Int. 3. I have had a long experience in analyzing waters. I mention only some of those analyzed in Mississippi; Natchez, Meridian, Holly Springs, Oxford, University, Water Valley, Senatobia, West Point, Macon, Port Gibson, and many private springs and wells.

Int. 4. I made an analysis of water for the Vicksburg Water Works Company July, 1903.

Int. 5. As a result of my chemical analysis, I report as follows, stating the several determinations in parts per million.

Appearance clear, no odor, no turbidity.

Reaction alkaline.

Total solids in solution	166.000
Loss on ignition	58.000
Chlorine	8.620
Free ammonia	0.015
Albuminoid ammonia	0.100
Nitrites	None
Nitrates	0.021
Oxygen consumed	2.100

This analysis shows that this water according to the highest and severest standards would be classed as "pure and wholesome," for drinking purposes. The hardness and the solids in solution are not sufficient to render it unfit for industrial purposes.

From a careful inspection, I formed the opinion that the settling basins and the filter units were admirably constructed. All the silt and mud was removed from the water, the process of filtration involved the use of a small quantity of the solution of ferrous sulphate, and of the solution of lime. These acting on each other, and on the organic matter in the water, finally form ferric hydrate, coagulating the albuminous material in the water, causing it and the mud to settle, and putting it in such condition that the filter units arrest it all and allow only the clear water with its dissolved material to pass into the basin, from which the water is pumped to consumers in the city.

211 During my stay of five days in Vicksburg in July, 1903, I took part in a careful bacteriological examination of the filtered water. It was found that there were so few bacteria in the filtered water that they amounted practically to nothing. From this point of view as well as from the chemical, I should say it is safe, potable water.

Answers to Cross-interrogatories.

Cross-int. 1. I was present each time when the water was taken for the bacteriological analyses. This was done twice a day from the 4th to the 8th of July. The water was generally taken from the filtered water in the basin from which the water is pumped to consumers. One sample was taken in my presence from the pipe in Hotel Piazza, and I took myself a sample from the pipe in the Carroll.

The water for the chemical analysis was taken in my presence from the basin of filtered water and was of the same kind as is pumped to consumers in the city. I assisted in putting it into a clean demijohn. I took part in fastening the cork with a wire, making a hole in the cork, and passing the wire through it so that no one could tamper with it without my knowledge. After this was done it was shipped by express to me at Oxford, Miss. When I received the demijohn it had not been opened.

Cross-int 2. Answer given in 1.

Cross-int. 3. It was.

Cross-int. 4. The samples of water I analyzed were of the same quality as that furnished to the city from July 4th to 8th, inclusive while I was in Vicksburg.

Cross-int. 5. The answer to this cross-interrogatory is given in the answer to direct interrogatory 5. I will state further that the quantity of crystallized sulphate of iron, and also the quantity of lime, which are added to the Mississippi River water is small, being only one grain and twelve hundredths of iron sulphate to the gallon, and thirty-six hundredths grain of lime to the gallon of water.

The lime combines with the acid in the iron salt, and then forms ferrous hydrate, this undergoes oxidation, and conversion into ferrous hydrate which acts as before described. See answer to direct interrogatory 5.

X Int. 6. I consider the filtered water furnished by the Vicksburg Water Works Company through its mains to the mayor and aldermen of the city of Vicksburg, and to the inhabitants of said city good and wholesome." I did not analyze the Mississippi River water as it is taken from the source of supply at Vicksburg.

Cross-int. 7. I know that the Mississippi river is the source of supply used by the Vicksburg Water Works Company. I saw the pumps at work forcing the water from the river into the settling basins; but I am not very familiar with the general topog-
212 raphy there. I think the intake is below the point where the Yazoo enters the Mississippi.

Cross-int. 8. I do not know. I made no analysis except of the filtered water as furnished to the mayor, aldermen and citizens of Vicksburg.

Cross-int. 9. I have not.

Cross-int. 10. I have not.

Cross-int. 11. I did not state that the filtered water was not good for all purposes, nor have I stated that it is not wholesome.

Cross-int. 12. At the time of my visit and examination July 4th-8th, (inclusive) 1903, I saw no way by which any water could be pumped into the mains and thereby supplied to the mayor, aldermen and citizens of Vicksburg, except that water from the basin of clear filtered water; that was the kind and quality which was being supplied when I made my examination and analysis.

Cross-int. 13. I analyzed no water for said water works company prior to the installation of the filtration plant now in use by said company.

Cross-int. 14. I have not analyzed any samples taken from any of the basins before they have passed through the filtration plant.

Cross-int. 15. I mean by "good and wholesome" as descriptive of water that the water has no bad odor, nor taste, nor color, no turbidity, that it possessed in a high degree freedom from animal impurities, and from vegetable substances in a decaying condition, and that it will not produce disease by reason of mineral or organic substances in solution, that it will serve industrial purposes.

Cross-int. 16. I know of nothing that will throw further light on the question except to say that I was very favorably impressed by the water works plant including the filter beds and thought the company was furnishing good, wholesome water.

R. W. JONES.

Sworn to and subscribed before me, this the 7th day of Jan'y, 1904.

[SEAL.] J. O. RAMSEY,
Chancery Clerk, Lafayette County, Miss., & Exofficio Notary Public.

The above and foregoing has the following indorsement, thereon, to-wit: 41. Equity. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg—Deposition of R. W. Jones—Filed Jan'y 9, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

213 *Depositions of M. O. Crumpler, A. L. Pierce, J. B. Smith, & Wm. Stanton.*

Caption.

STATE OF MISSISSIPPI, *County of Warren, City of Vicksburg, ss:*

Be it remembered, that on this the 20th day of November, A. D. 1902, by virtue and pursuance of an order of the Honorable H. C. Niles, judge of the circuit court of the United States for the southern district of Mississippi, appointing me to take depositions of witnesses on the motion of complainant praying for an injunction restraining the city of Vicksburg from using, authorizing or permitting the inhabitants or other persons of Vicksburg from connecting with or depositing sewerage matter, or using same for sewerage purposes in what is known as an underground gutter on Washington street in Vicksburg, Miss., in a certain case therein pending in said court wherein The Vicksburg Waterworks Company is complainant, and The Mayor & Board of Aldermen of the City of Vicksburg are defendants, and the attached interrogatories being filed with me and copies thereof being served on the defendants and their counsel of record by the marshal of the southern district of Mississippi, on the 10th day of November, A. D. 1902, together with notice of time and place of taking such testimony, I caused the same M. O. Crumpler, J. B. Smith, William Stanton & A. L. Pierce, each ond every one of

them being of sound mind and upwards of twenty-one years of age, to come before me at my office in the city of Vicksburg, county of Warren & State of Mississippi, and said M. O. Crumpler, J. B. Smith, William Stanton & A. L. Pierce being separately cautioned and first duly sworn to speak the truth, the whole truth and nothing but the truth in said answer to said interrogatories, did depose and say:

In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

To the Mayor and Aldermen of the City of Vicksburg, William Vollor, and Magruder, Bryson & Dabney, its attorneys of record:

Enclosed we hand you copies of interrogatories to be propounded to M. O. Crumpler, A. L. Pierce, & J. B. Smith, & Wm. Stanton, this day filed in the office of the clerk of the circuit court of the United States, western division of the southern district of Mississippi. Kindly file with said clerk ten days from this date, in ac-
214 cordance with rule of practice number 67 of the courts of equity of the United States. After the expiration of the said ten days, we will request a commission to be issued in accordance with the said rule.

S. S. HUDSON,
SMITH, HIRSH & LANDAU,
Att'ys for Pl'ff.

The United States marshal will please serve copies of the above notices with copies of the said interrogatories upon the Mayor and Aldermen of the City of Vicksburg, William Vollor, and Magruder, Bryson & Dabney, their solicitors of record.

In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be Propounded to M. O. Crumpler.

Int. I. State your name, age, residence and occupation.
Int. II. How long have you been engaged in such occupation?
Int. III. How long have you resided in the city of Vicksburg?
Int. IV. Do you know anything about an underground sewer or culvert in the city of Vicksburg, under Washington street, extending along the main business portion of said city on said street?

Int. V. If you have answered the preceding interrogatory in the affirmative, state where the outlet to this sewer is situated.

Int. VI. State, if you know, for what purpose the said sewer or culvert was originally constructed.

Int. VII. State, if you know, to what use the said sewer is now put?

Int. VIII. State fully whether or not there have been any connections made with said sewer through sewers laid on other streets in the city of Vicksburg?

Int. IX. To what use have such connected sewers been put?

Int. X. State, if you know, what will be the effect of such use upon the water supply of the city of Vicksburg and its inhabitants so far as your company is concerned.

Int. XI. State whether your company has protested or objected to the use of the said gutter or sewer for the purpose about which you have testified; and, if so, state fully what your company has done in that connection.

Int. XII. State, if you know, what is the population of the city of Vicksburg; how many customers your company is now supplying with water; how many houses it is now supplying with
215 water; about how many people are living or doing business on Washington street; and also state the size of the buildings connected with the said sewer, and the usual number of inmates therein.

Int. XIII. Do you know of any existing conditions which is creating a continuous flow of water by the outlet of the said underground gutter, and which flows directly in front of the city water works. Please file a map showing the said gutter and the sewerage connections therewith, and the relative positions of the sewerage outlet and the intake pipe of the water works company.

Int. XIV. Do you know of any ordinance or resolution authorizing any sewerage connection with the said underground gutter.

Int. XV. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be Propounded to A. L. Pierce.

Int. I. State your name, age, residence and occupation.

Int. II. How long have you been a civil engineer and practicing that profession?

Int. III. Were you ever civil engineer for the city of Vicksburg, and if so, what years?

Int. IV. As civil engineer did you ever draw the plans for an underground gutter to be built on Washington street, Vicksburg, Mississippi; and if so, was it ever built, and who supervised the construction of the same; how long is this gutter; where does it begin, and what is its size, and for what purpose was it built, and when was it built, and who built it?

Int. V. Was it or not ever designed or constructed for, or was it ever contemplated that said culvert was to be used for sewerage of excremental matter.

Int. VI. Does this underground gutter empty into any body of water; and if so, what is its name, and into what body of water does it flow, if any?

Int. VII. Which way does the current of the water flow with reference to the mouth of this gutter and the intake pipe of the City Water Works Company?

Int. VIII. Do you know, or can you set forth any other
216 matter or thing which may be a benefit or advantage to the parties at issue, in this cause, or either of them or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be Propounded to J. B. Smith.

Int. I. State your name, age, residence and occupation, and how long you have been engaged in such occupation?

Int. II. How long have you resided in the city of Vicksburg?

Int. III. State, if you know, for what purpose the sewer on Washington street in the said city of Vicksburg, was originally constructed.

Int. IV. State to what use the said sewer is now put.

Int. V. State where is the outlet of the said sewer.

Int. VI. State if you can about what quantity of excremental matter is received daily in said sewer and discharged therefrom at its outlet.

Int. VII. State if you know, either accurately or approximately, how many water closets are now connected with the said sewer?

Int. VIII. State, if you know, whether all of these closets are actively and daily in use.

Int. IX. By whose authority or consent is this sewer used in con-

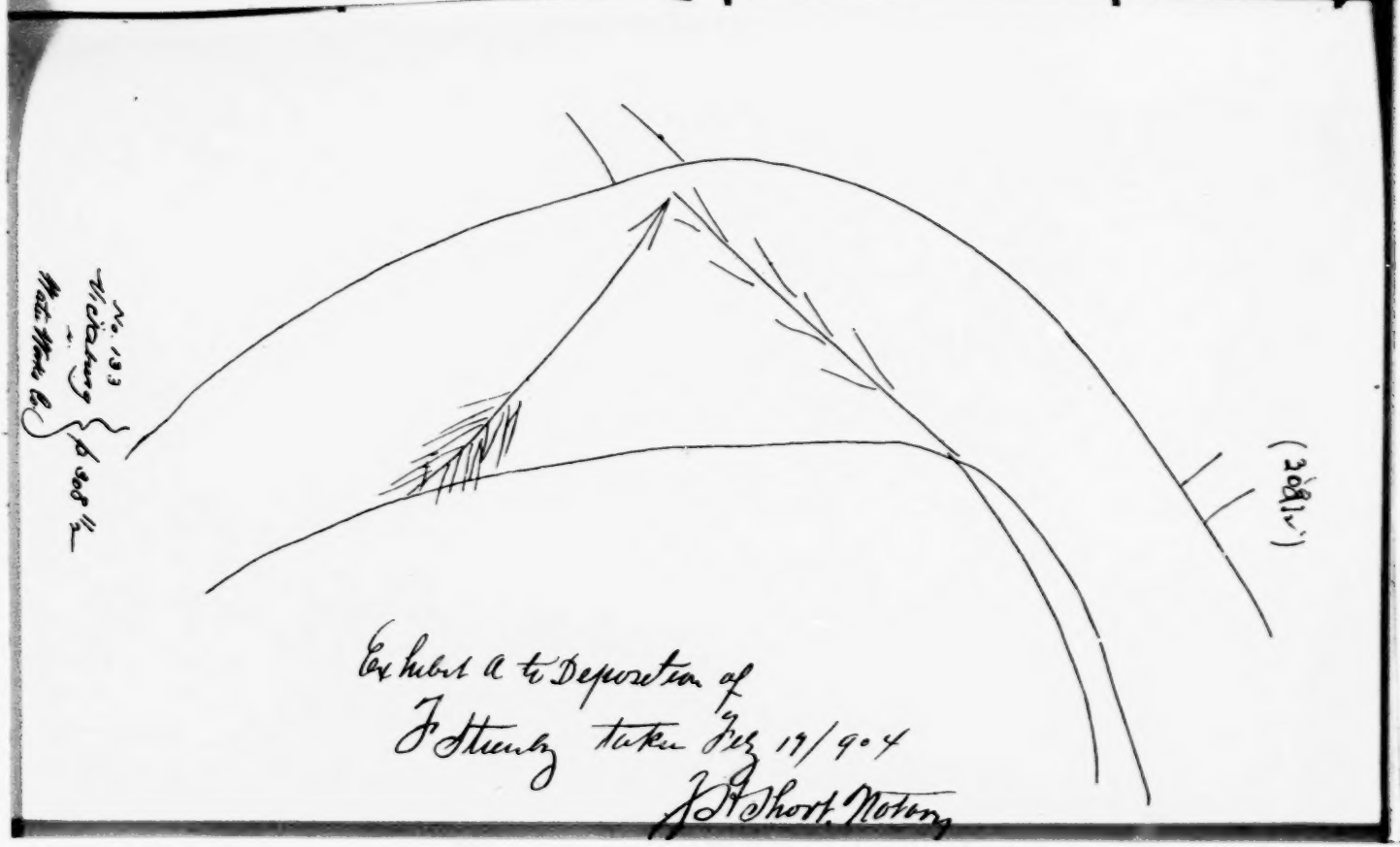


Exhibit A to Deposition of
J. Stuntz taken Feb 19/904
J. D. Short, Notary

nection with these water closets, or for the discharge of sewerage or excremental matter?

Int. X. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be propounded to William Stanton.

Int. I. State your name, age, occupation and place of residence.

Int. II. Were you ever a contractor, and if so, what years?

217 Int. III. As contractor, did you ever construct an underground gutter on Washington street in the city of Vicksburg, Mississippi, and if so, who for?

Int. IV. How long is this gutter; where does it end, and where begin; what is its size; what was it built for, and where is its outlet?

Int. V. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer to Interrogatories Propounded to M. O. Crumpler.

Ans. to Int. No. 1. M. O. Crumpler, over twenty-one, live in Vicksburg, and manager of the city waterworks.

Ans. to Int. No. 2. Since August 15th, 1900.

Ans. to Int. No. 3. I have been in Vicksburg since August 15th, 1900.

Ans. to Int. No. 4. Yes, I know there is an underground culvert along the principal business portion of Washington street, for a distance of about eight blocks.

Ans. to Int. No. 5. The outlet, or discharge of said sewer is at the foot of Main street, about one block west of Washington street.

Ans. to Int. No. 6. The sewer was originally constructed for the purpose of carrying off surface water.

Ans. to Int. No. 7. The sewer is now used for water closets and urinal connection for the purpose of carrying off the excremental matter and to carry off the surface water.

Ans. to Int. No. 8. There has been, and is now, sewer mains laid

along other streets which have their connections and outlet into the sewer on Washington street. These streets are, Veto, South, Crawford, Clay, China, Grove, Jackson & Main, each of which have a sewer main laid along them and all connected with Washington Street sewer.

Ans. to Int. No. 9. The residences, stores and other premises on these streets have their water closets connected with these sewers and use them daily, all of which have their outlet into the sewer on Washington street, above described.

Ans. to Int. No. 10. I know it to be a fact that the excremental matter discharged from these sewers which is near the intake pipes of the city waterworks will pollute the water so as to produce typhoid fever and other fatal diseases. In other cities where a similar condition, as to the sewer outlet and intake pipes of the city waterworks exist, it has produced typhoid fever and other diseases to an alarming extent.

Ans. to Int. No. 11. Yes, our company has protested again and again against the use of said culvert for sewerage purposes, that is, for such purpose as it has recently been put to, such as water
218 closet connection etc. The City Water Works Company filed a suit in the United States court some eighteen months ago to have such usages stopped, but the mayor and council have continued to permit, not only the closets then connected to be continually used, but have permitted and authorized sewer mains and water closets to be connected and used and are to this very day allowing such mains and connections to be made. The water company has personally, together with its attorneys gone before the board of mayor and aldermen about two months ago with a written petition requesting them to quit the use of said culvert for water closet connections, but like similar complaints, it seems to have fallen on barren ground. I attach a copy of said written petition to my interrogatories and mark same Exhibit "A," and make same a part of my answer.

Ans. to Int. No. 12. The population of Vicksburg and its suburbs is about 22,000. We are supplying about seven thousand five hundred people with water. Very near the entire business of the city is done on Washington street, and its immediate section. I think there are about nine or ten thousand people living and doing business on Washington street and its immediate section. All of the big hotels, office buildings, stores and other public buildings, such as the custom house, and postoffice buildings, and most all stores, restaurants, saloons, etc. on Washington street and immediate section have their water closets connected either directly or indirectly with the sewer along Washington street and the lateral sewers connected therewith.

Ans. to Int. No. 13. Yes, there is an existing condition which is creating a condition that causes the water to flow by the outlet of said underground gutter or sewer along Washington street, which causes the water to flow directly in front of the city water works intake pipes. I attach a map to my interrogatories and mark it

Exhibit "B" and make same part of my answer, which shows the sewer on Washington street, together with the lateral sewers connected therewith, and the outlet of same and the city waterworks intake pipes, showing their relative position.

Ans. to Int. No. 14. Yes, I know that the city council have passed resolutions authorizing permitting or generally acquiescing in sewer mains being laid and water closets being connected therewith, all of which have their outlet at place designated on map Exhibit "B."

Ans. to Int. No. 15. The city waterworks were built in 1887, and the pumping station and intake pipes were located on the Mississippi river at which point it gets its supply of water for city and domestic purposes and that it has continued to get water from said place up to the present time and is doing so now. When the city waterworks located its pumping plant below said outlet of sewer, the sewer was used for surface drainage only, and no water closet was then connected with the sewer, and was not until within the last few years. The condition continues to get worse by the continued daily connections of water closets in the most thickly populated part of the city, as well as other parts of the
219 city. The health of the city is impaired by this condition of affairs, and besides this condition will ruin the city waterworks in this, it will cause the patrons to stop the use of the water and will throw the company into bankruptcy. The city council has also within the last twelve months or such a matter, made or caused to be made the entire dumpage from the scavenger carts of the city just below the outlet of this sewer. The dumpage consists of matter gathered up by the scavenger carts over the city consisting of all waste and rotten matter, such as rotten cabbage, potatoes, bananas, apples, peaches, grapes and all other rotton vegetables and fruits, such as is usually put into slop barrels. Also all small dead animals, such as cats, dogs, rats, etc., all of which contaminates and pollutes the water at the intake pipe of the city waterworks from this place of dumpage.

M. O. CRUMPLER.

Sworn to and subscribed before me, this 20th. day of November, 1902.

J. H. SHORT,
Special Commissioner & U. S. Commissioner.

EXHIBIT "A."

SEPTEMBER 22ND, 1902.

To the honorable Mayor and Aldermen of Vicksburg, Mississippi.

GENTLEMEN: We most respectfully but earnestly, call your attention to the dangerous condition that now partly exists, and which will wholly exist as soon as the contemplated canal is fully completed and the Yazoo river is flowing directly in front of the city, which we presume will be the case after the next thirty foot rise in

the Mississippi river, and is likely to come at any time, and almost certain to come not later than ninety days.

We refer to the sewerage excremental matter that is being discharged from the culvert at the foot of Washington St. just north of the Y. & M. V. passenger depot. This culvert was originally built for surface drainage only, but has been turned into a sewer for stores, hotels and other buildings along Washington street for a distance of about eight blocks. There have been also sewer mains laid along Veto, South, Crawford, Clay, China, Grove, Jackson and Main streets connecting with this culvert; residences and other buildings along these streets are connected or being connected daily with these sewer mains, so that the entire sewerage outlet of the city is at the foot of Washington St., as above stated, thus attempting to make a complete sewerage system in the most thickly populated portion of the city.

We think it also proper to state that all these connections have either been made by your direct authority, or by your formal acquiescence. We especially call your attention to the further
220 fact that the outlet of this excremental matter is at a point above where the intake pipes of the city water works are located, and therefore, partially pollutes the water, not during high water, at the intake pipes, of the Mississippi river, but as soon as the canal is open and the Yazoo is allowed to flow directly in front of the city the pollution of the water at that point by this excremental matter will be continuous every day and every hour, thereby contaminating the waters at the intake pipes of the city water works, located about one mile from the sewerage outlet making it unfit for use, and thus producing typhoid fever and impairing the health of the city, and causing the patrons of the city to stop the use of the water and entailing great loss upon us.

You will undoubtedly recall that when the pumping station of the water works was located, neither this culvert, nor any of the connections was then used as a sewer, and that it has only been used for sewer purposes within the last few years, a use which has been sanctioned by you.

A bill was filed as you are aware, in the United States court by this company praying among other things for a decree directing your honorable body to stop the use of this culvert for sewerage purposes, but notwithstanding the pendency of this litigation you have continued to permit it and authorize this sewerage connection, and on this very day there are sewer mains being laid to or connected with this culvert by your authority or consent, and if this practice is not discontinued this company will be irreparably injured.

We respectfully request your honorable body to remedy the condition to which we allude without compelling us to apply for an injunction to obtain relief. We also respectfully notify you that unless your honorable body prevents this culvert being used for sewerage purposes, and thus remove this constant menace to the health of the people, the city will necessarily be held liable for any and all damages and expenses the water company may sustain, or be put to, as you

are already responsible for permitting this condition of affairs to exist.

We respectfully request that you take immediate measures to remove this great cause of complaint.

(Signed) VICKSBURG WATER WORKS CO.
S. S. HUDSON.
SMITH, HIRSH & LANDAU.

Exhibit "A." J. H. Short, special commissioner.

Deposition of William Stanton.

Ans. to Int. No. 1. My name is William Stanton, age 62, occupation architect, place of residence, town of Speed's Addition.

Ans. to Int. No. 2. Yes, from 1866 to 1882.

Ans. to Int. No. 3. Yes, my firm, Stanton & Company, did. The underground gutter was constructed for the city of Vicksburg.

221 Ans. to Int. No. 4. The underground gutter constructed by my firm extended from Veto street along Washington street, and emptied into Lake Centennial at the foot of First East street, about seven blocks in length. Its internal diameter was four feet at Veto street, and gradually increased to eight feet.

Ans. to Int. No. 5. The purpose for which the underground gutter along Washington street was originally constructed was to carry off the surface water caused by rains which in their descent down the hill cut the streets west of Washington street very badly, and also for the purpose of draining the basements of the buildings on the east side of Washington street, and it fully performed this duty.

WILLIAM STANTON.

Sworn to and subscribed before me, at Vicksburg, Miss., this 20th day of November, 1902.

J. H. SHORT,
Special & U. S. Commissioner.

Deposition of J. B. Smith.

Ans. to Int. No. 1. J. B. Smith, age 42, residence Vicksburg, Miss., occupation, plumber. Have been engaged in present business about 18 years.

Ans. to Int. No. 2. Have lived here all my life having been born here.

Ans. to Int. No. 3. My information and understanding is that it was built there for drainage of surface water. It is now used to drain surface water, water closets, urinals, and sinks. The present outlet of the said sewer is into Lake Centennial, near the foot of Main street.

Ans. to Int. No. 4. See answer to No. 3.

Ans. to Int. No. 5. See answer to No. 3.

Ans. to Int. No. 6. It is impossible to calculate this.

Ans. to Int. No. 7. I think that there are between three and four hundred water closets and urinals connected with this sewer at present.

Ans. to Int. No. 8. I think they are all in use daily.

Ans. to Int. No. 9. I know of a great many put in by consent of the board of mayor and aldermen of Vicksburg.

Ans. to Int. No. 10. It is my opinion that the use of this underground gutter along the most populous street of the city is a menace to the health of the city and the sewerage thus discharged flows down past the intake pipes of the city water works and pollutes the supply furnished the city.

J. B. SMITH.

Sworn to and subscribed before me, at Vicksburg, Miss. this 20th. day of November, 1902.

J. H. SHORT,
Special & U. S. Commissioner.

222 *Deposition of A. L. Pierce.*

Ans. to Int. No. 1. A. L. Pierce, age 66, residence is Vicksburg Miss. surveyor and civil engineer.

Ans. to Int. No. 2. 45 years.

Ans. to Int. No. 3. Yes. I was civil engineer for the city of Vicksburg in the years 1870 & 1871.

Ans. to Int. No. 4. Yes I did. Yes it was built, and I supervised its construction. It is about three hundred feet in length. It begins at intersection of Veto and Washington streets and is constructed down the center of Washington street to First East street. At Veto street the size was three feet, and it gradually grew larger and was six feet by six feet at the outlet at the foot of First East street. As shown by diagram hereto attached, marked Exhibit "A," and made a part of this answer. This underground gutter was built for the purpose of surface drainage, and constructed in 1871 as near as I can remember, by the firm of Stanton & McKenna.

Ans. to Int. No. 5. I think not.

Ans. to Int. No. 6. At the time is was constructed it emptied into the Mississippi river, but now empties into Lake Centennial.

Ans. to Int. No. 7. The outlet of this gutter is above the intake pipes of the city waterworks, and the water flows south from the outlet and towards and past the intake pipes of the water works.

Ans. to Int. No. 8. The discharge of the excremental matter into the water so near the intake pipes of the waterworks is endangering the health of the city.

A. L. PIERCE.

Sworn to and subscribed before me, at Vicksburg, Miss. this 20th. day of November, 1902.

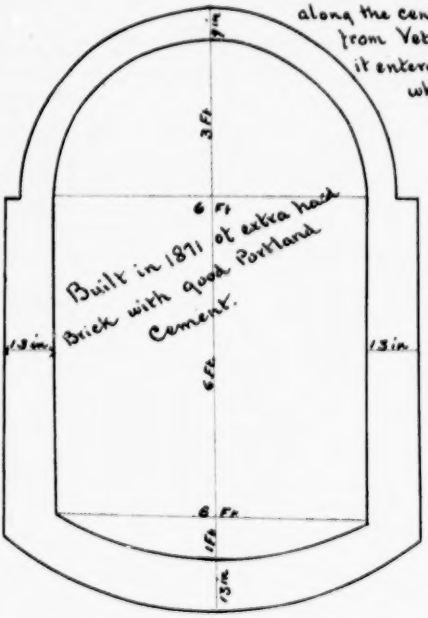
J. H. SHORT,
Special & U. S. Commissioner.

(Here follows diagram marked page 276½.)

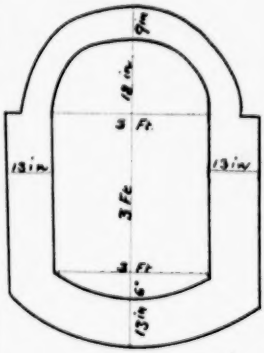
No. 133.
Vicksburg
Miss. } # 276½

(276 1/2)

This Sewer is 3000 ft. long, being built along the centre of Washington St from Veto to 1st East St., where it entered the Mississippi river, when first constructed.



Cross Section of Washington St. Sewer at 1st East Street.



Cross Section of Sewer at intersection of Veto and Washington Sts.

Exhibit "A" to A. L. Bierce deposition.

223 *Certificate.*

STATE OF MISSISSIPPI, *County of Warren, City of Vicksburg, ss:*

I Joseph H. Short, specially a commissioner in the cause styled in the caption of the foregoing depositions, to take the testimony of witnesses for the complainant in said cause, do hereby certify that I caused to come before me, M. O. Crumpler, J. B. Smith, William Stanton and A. L. Pierce, at my office in the postoffice building in the city of Vicksburg, in the county of Warren and State of Mississippi, aforesaid, and they being by me first separately duly cautioned, sworn and examined, to speak the truth, the whole truth and nothing but the truth, I did carefully and impartially examine said witnesses on said interrogatories (no cross-interrogatories having been filed by defendants, or their attorneys), when they did depose and testify as above shown; that the answers of each and all of said witnesses were by me reduced to writing on a typewriting machine in the presence of said witnesses, and by me carefully read to and thoroughly understood by said witnesses each as his deposition in said cause; that each signed his name to his own and as his deposition in my presence; that the questions propounded to said witnesses and to which he has answered are the interrogatories submitted to me by complainant, and copies of which were served on said defendants and their attorneys of record, and that said depositions have in no manner been altered or changed since the same were subscribed by said witnesses, but that the same with exhibits thereto which are herewith returned, have remained in my possession up to the time of delivering the same into the hands of the clerk of the said court. And I further certify that during the examination no counsel appeared for either side but that the questions were read to each witness each his own and separately and direct by me.

And I further certify that I am not of counsel for either side and am not concerned in the aforementioned cause, either directly or indirectly.

In witness whereof, I have hereunto set my hand and affixed my seal of office, as an United States commissioner this 20th. day of November, A. D. 1902.

[SEAL.] JOSEPH H. SHORT,
Special Commissioner in this Cause & United States Commissioner for the Southern District of Mississippi.

The above and foregoing has the following indorsement thereon, to-wit: # 41. In equity—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Depositions of M. O. Crumpler, J. B. Smith, A. L. Pierce & Wm. Stanton.—Filed Nov. 20th, 1902, L. B. Moseley, clerk, J. H. Short, D. C.

224 *Deposition of H. J. Trowbridge.*

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is understood and agreed that the answers of H. J. Trowbridge, to the appended interrogatories and cross-interrogatories, when made under oath before some officer authorized by the State of Miss. to administer oaths, may be read in evidence on the hearing of the above entitled cause, subject only to objections for irrelevancy and incompetency; notice and commission and all matters of form are hereby expressly waived; the certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal captions and certificate of such officer *is* expressly waived, and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscribed before me this — day of ——" and signed by the officer with dates properly filled in.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Att'ys for Complainant.

W. J. VOLLOR &
MAGRUDER, BRYSON & DABNEY,
Att'ys for Defendant.

Interrogatories to be Propounded to H. J. Trowbridge, City Clerk, Vicksburg, Miss.

Int. 1. State your name, age residence and occupation?

Int. 2. If you state that you are a city clerk for the defendant, please state how long you have held that office?

Int. 3. Who has charge of the minutes, resolutions, ordinances, committee reports, and records of the defendant?

Int. 4. If the said minutes, resolutions, ordinances, committee reports and records are in your possession, examine same carefully, and state whether there is any report, resolution, or ordinance prior to November, 1900, condemning or in any sense annulling, criticising or complaining of the Vicksburg water supply by the Vicksburg Water Works Company for the character of water delivered by the management and operation of the plant, or maintaining in any manner that the contract had been forfeited in the slightest degree.

Int. 5. Has the defendant a contract with the complainant for the rental of fire hydrants for fire protection and what is the
225 duration of that contract and what does the city now pay for the same per annum?

Int. 6. As city clerk, do you issue warrants on the city treasurer to pay said debts, if so, please examine your records and state from them whether, or not, the city ever refused to pay the water company for water prior to the 15th. of Aug. 1900 and please state when these bills are due and payable, and state whether or not it has refused to pay the bills since the 15th. of Aug. 1900, except by mandamus of the court.

Int. 7. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue, or either of them, or that may be material to the subject of this your examination, or the matters in question in this case? If yea, set forth the same fully and at large in your answer.

Int. 8. Please state if the records of the city show that the city council ever permitted or consented or contracted with any person or persons to lay sewer mains or pipes along any of the streets or alleys or elsewhere in the city of Vicksburg, to connect water closets with the storm sewer on Washington Street or for the purpose of discharging excremental or other waste matter into the said storm sewer, and if so, please give in detail the dates when, and the names of the parties to whom, such permission was given or contract let to make or build such connections with the said storm sewer on Washington street.

Int. 9. Please state if permission was ever given or contract let by the council of the city to any person or persons to make or build said sewer connections with the storm sewer on Washington street prior to the installation of the water works plant in 1887 and 1888.

Int. 10. Please give the total indebtedness of the city of Vicksburg at the time of the last annual statement.

Int. 11. Please give the total assessed value of all the taxable property, both real and personal, in the city of Vicksburg, as shown by the last assessment rolls.

Int. 12. What provisions, if any, of the Annotated Code of Mississippi of 1892 has the city of Vicksburg adopted within the past year, and elected to be governed by, and who were the aldermen of Vicksburg, 7th Nov. 1900?

Cross-interrogatories.

X Interrogatory 1. State the distance, as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtained its supply of water, northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtained its supply?

X Int. 3. Can you state whether the water discharged from
226 the Yazoo river is good and wholesome, and fit for all purposes of domestic or manufacturing consumption.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution.

X Int. 5. State if it is not a fact that the greater part of its course,

the Yazoo river passes over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is the fact, state if it is not true that the water in Yazoo river is generally considered bad and that if it is used for drinking purposes it is likely to produce malarial diseases.

X Int. 6. State if it is not a fact that the sewerage from a large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river, about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the water works company.

X Int. 7. State as fully as you can the size and length of said Washington Street sewer.

X Int. 8. State as fully as you can, the extent of sewerage carried by said sewer, and discharged through it into the Yazoo river, especially state if it — not a fact that nearly all of the business houses on Washington street do not have their water closets discharged into said sewer, and particularly does not the offal and excrement from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish club, Elks club, opera house, jail, St. Francis Xavier's College, Vicksburg sanitarium, city hall, and U. S. postoffice and practically all of the dwellings on South street from Adams street west to Washington street drain into and discharge through said sewer.

X Int. 9. State whether the said sewer was constructed before or since the water works plant was installed, and, if before, state as fully as you can about what year the said sewer was constructed.

X Int. 10. State what change has taken place since the construction of the water works in regard to point of discharge of the Yazoo river.

X Int. 11. State what change, if any, in regard to the opportunity of sewerage contamination of the water supply has taken place.

X Int. 12. State as fully as you can the general direction of the surface drainage from the city of Vicksburg and particularly whether or not it is westward from the larger part of said city into the Yazoo and Mississippi rivers, and along such part of the same as is within two miles of the intake pipe of said company.

X Int. 13. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage, and if you state that you have such knowledge, state as fully as you can the extent of the contamination, and whether the water from said Yazoo river is good and wholesome and fit for domestic uses.

227 X Int. 14. State whether any part of the water taken and used by said water works company comes from the Yazoo river and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

X Int. 15. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicks-

burg and other consumers by said water works company prior to the installation of the filter plant.

X Int. 16. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 17. State as fully as you can whether all water so furnished as aforesaid, since the installation of said filter plant has been passed through said plant, and if you state it has not, state how often said company has furnished such unfiltered water, and how long at a time.

X Int. 18. State whether such unfiltered water was pumped from basins containing sediment from water previously treated with chemicals before being passed through the filter.

X Int. 19. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals which had been used in preparing water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers, and its odor or scent if it had any, since the installation of the filter plant, and whether the same was not charged with mud and other insoluble matter in excess of what it was when first taken from the river.

X Int. 20. State any tests or examinations you may have made with unfiltered water since the installation of the said filter.

X Int. 21. State the quality of the water supply used by said company, when it is first pumped into its basins and before the same has been treated in any way with chemicals or passed through the filter.

X Int. 22. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome and fit for all purposes of domestic or manufacturing consumption in its original state as it is taken from the source of supply and before it is treated in any way by chemicals or passed through the filter.

X Int. 23. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reasons in full.

X Int. 24. If you cannot state that it is free from contamination, state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 25. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good, wholesome water, state why you have not considered the same good and wholesome.

X Int. 26. If you cannot state that said water was taken
228 from the source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 27. State as fully as you can to what tests or examinations you have put such water to in its original state, as taken from the source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes, state if you have any knowledge of the same in regard to uses not coming under any of your tests or examination.

X Int. 28. If you have stated in answer to any of the foregoing

interrogatories, that the water as taken by said company from the source of supply falls short of the standard of purity above mentioned, viz: "that it shall be free from all sewerage contamination, and shall be good and wholesome water, fit for all purposes of domestic or manufacturing consumption," state the particular quality or ground wherein it falls short of such standard and to what extent it fails or has failed to meet the required standard.

X Int. 29. State whether said company prior to the installation of its filter treated the said water in any way by chemicals, or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

X Int. 30. State whether said company maintained settling basins at its pumping station, and pumped the water from its source of supply first into such basins, before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins and how long the water was permitted to remain therein before pumping the same into the mains for use of consumers.

X Int. 31. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 32. State, if you know, how long said basins were allowed to stand without having the sediment from such water removed therefrom.

X Int. 33. State whether or not you filtered or in any other way treated the water supplied you by said company, or any part thereof, before using the same, and if you state that you did state why you found it necessary to filter or otherwise treat the same.

X Int. 34. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your reading or conversation you have ever heard of such that was supplied with water taken from a stream, which flowed through or by such city, town or village at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know of, have seen or heard of such city, town or village, give the name and location of such.

X Int. 35. State, if you know anything of the plant, that is, machinery and ways, means and appliances used by said water works company in obtaining a supply of water and distributing the
229 same to its several consumers, and if you state that you do, state and describe its machinery and appliances used in obtaining water from the source of supply, and putting the same into its settling basins, what is the size and number of lines of pipe in use by said company from its pump house to the Mississippi river, what is the number and size of the engine used in lifting or pumping water from the said Mississippi river into the settling basins of said company, what is the capacity per day for taking water from said Mississippi river and putting the same into the settling basins now in use by said company does the pumping engine or engines used by said company in so taking and lifting water from said river into said basins require to be moved or shifted as the said river rises

or falls, and if you state it does, state what rise or fall of said river required the same to be so shifted, and state the time required for such shift, state if the machinery, ways or appliances now and heretofore in use by said company in lifting its water from the river and supplying the same in the basins is in duplicate so that one set can be kept in operation while the other is being shifted on the river bank.

X Int. 36. State if it is not a fact that in August, 1900, the management of the water works system in this city was changed and that one Mr. M. O. Crumpler about that time assumed the management of said system taking the place of Mr. C. R. McFarland, who for a number of years before then, managed the same.

X Int. 37. State if there were any shut-downs during the management of said McFarland, and if you state that there were, state as well as you can how many, giving dates and duration of time, that there was not sufficient water under sufficient pressure to afford ample protection against fire to defendant city and its inhabitants.

X Int. 38. State the causes if you can of such shut-downs, during McFarland's management of said system.

X Int. 39. State whether there have been any shut-downs since said Crumpler took charge of said water works system, and if you state that there have been, state as well as you can the number, and frequency of the same, and approximate as closely as you can the duration of each.

X Int. 40. State if it is not a fact that for frequent and long periods of time since the said Crumpler became the manager of said waterworks company that the water in the mains if any at all, was under insufficient pressure to afford any protection against fire, give particulars as fully as you can.

X Int. 41. Is it not a fact that the complainant waterworks company since August, 1900, has frequently and for comparatively long periods of time, failed to furnish through the means of its waterworks system an adequate supply of water for public and private use. If you state that it has, state to what extent the supply has been inadequate and for what purposes.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

230 Deposition of H. J. Trowbridge, witness for plaintiff, to interrogatories and cross-interrogatories propounded by attorneys for plaintiff and defendant in the case of Vicksburg Water Works Co. *vs.* Mayor and Aldermen City of Vicksburg, taken before J. H. Short, a notary public, on Friday, February 26th, 1904.

Witness being first duly sworn, testified as follows:

Ans. Int. 1. H. J. Trowbridge, age 52, residence Vicksburg, occupation, city clerk of the city of Vicksburg.

Ans. Int. 2. Held the office of city clerk for the past twenty years.

Ans. Int. 3. I have charge of the minutes, ordinances, committee reports, and records of the defendants.

Ans. Int. 4. I have examined the records, and do not find that any complaint was made prior to November, 1900.

Ans. Int. 5. The city has a contract with complainant for the rental of hydrants for fire protection. The contract extends for 50 years beginning Nov. 19th, 1886, and it is for 100 hydrants at $65.00 a year, additional hydrants at $50.00 a year.

Ans. Int. 6. The city never refused to pay the bills of the water works company prior to August 15th, 1900. These bills are due and payable January and July of each year. These bills have been refused payment since the 15th of August, 1900.

Ans. Int. 7. I know nothing at the present time.

Ans. Int. 8. Contract let to J. B. Smith to build sewer pipe for city hall, April 7th, 1903.

Ans. Int. 9. I have examined the records and failed to find where any permission was given.

Ans. Int. 10. The total debt is $627,254.78.

Ans. Int. 11. $6,738,256.00.

Ans. Int. 12. The issuance of $50,000.00 city hall bonds. Power to confer upon the board of mayor and aldermen the right to regulate and control the prices to be charged for the use of water, gas, electricity, and other public necessities, and to prescribe and refuse reasonable regulations governing the supply of said necessities, and for other purposes, and it adopted sections 3014, 3015, & 3016 of the Annotated Code of 1892 of Mississippi. The aldermen of the city of Vicksburg on 7th Nov. 1900, were Joe Homburger, Tom Coughlin, D. Montgomery, M. J. Fouse, R. M. Kelly, John Walsh, D. A. Campbell & J. J. Hayes.

Answers of H. J. Trowbridge to Cross-Interrogatories.

Ans. X Int. 1. About half mile, I think.

Ans. X Int. 2. Yes.

Ans. X Int. 3. I know nothing about whether the water discharged from the Yazoo river is wholesome, and fit for domestic purposes.

231 Ans. X Int. 4. I cannot say.

Ans. X Int. 5. I cannot say.

Ans. X Int. 6. Yes.

Ans. X Int. 7. I think the sewer running along Washington street is about seven blocks long. I suppose the sewer along Washington street is about nine or ten feet in diameter.

Ans. X Int. 8. To the first part of this question I answer I do not know. Yes, it is a fact that all the sewerage from the business houses, and other places named in this question, empties into the said sewer, that empties into the Yazoo canal, at the foot of Main street.

Ans. Int. 9. The sewer was constructed before the waterworks plant was installed. My recollection is the sewer was constructed about the year 1875, or 1876, somewhere along in there.

Ans. X Int. 10. The Yazoo river now empties into the canal running by Vicksburg that is constructed to empty into the Mississippi

river; it used to empty into the Mississippi river several miles above Vicksburg at Youngs point.

Ans. X Int. 11. I cannot answer.

Ans. X Int. 12. The general direction of the surface drainage from the city is westward.

Ans. X Int. 13. I cannot answer.

Ans. X Int. 14. I cannot answer.

Ans. X Int. 15. It was very muddy.

Ans. X Int. 16. It is very good and clear.

Ans. X Int. 17. I cannot answer.

Ans. X Int. 18. I cannot answer.

Ans. X Int. 19. I cannot answer, I do not know

Ans. X Int. 20. I have made no tests nor examinations.

Ans. X Int. 21. I cannot answer.

Ans. X Int. 22. I cannot answer

Ans. X Int. 23. I cannot answe

Ans. X Int. 24. I cannot answer.

Ans. X Int. 25. I cannot answer.

Ans. X Int. 26. I cannot answer.

Ans. X Int. 27. I have made no tests or examinations.

Ans. X Int. 28. I cannot answer.

Ans. X Int. 29. I cannot answer.

Ans. X Int. 30. I cannot answer.

Ans. X Int. 31. I do not know.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. I cannot answer.

Ans. X Int. 34. I cannot answer.

Ans. X Int. 35. I cannot answer.

Ans. X Int. 36. Yes.

Ans. X Int. 37. My recollection is that there were no shut downs during the management of C. R. McFarland.

Ans. X Int. 38. As stated above, there were no shut downs.

232 Ans. X Int. 39. There have been shut downs since the time Crumpler took charge. I cannot say as to number or duration.

Ans. X Int. 40. I cannot say.

Ans. X Int. 41. I cannot answer.

H. J. TROWBRIDGE.

Sworn to and subscribed before me, this 26 day of February, 1904.

J. H. SHORT,

[SEAL.] *Notary Public.*

The above and foregoing has the following indorsement thereon, to-wit:—#41 Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Deposition of H. J. Trowbridge. Filed Feb'y 29, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

Depositions of F. Streuby, E. S. Butts, J. M. A. Brennan, J. B. Smith, D. H. Herman, C. Linstrom, & J. Voeinkle.

Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

No. —.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is understood and agreed that the answers of J. J. Powers, T. Streuby, E. S. Butts, J. M. A. Brennan, J. B. Smith, D. H. Herman, T. L. Flanagan, C. Linstrom, & J. Voeinkle, to the appended interrogatories and cross-interrogatories when made under oath before some officer authorized in the State of Mississippi to administer oaths, may be read in evidence on the hearing of the above entitled cause subject only to objections for irrelevancy and incompetency, notice and commissions and all matters of form are hereby expressly waived. The certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal captions and certificate of such officer are expressly waived, and the certificate shall be sufficient, if it is in the following form: "Sworn to and subscribed before me this — day of ——" and signed by the officer with the dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Complainant.
W. J. VOLLOR &
BRYSON & DABNEY,
Attorneys for Defendant.

233 *Interrogatories to be Propounded to J. J. Powers, T. Streuby, E. S. Butts, J. M. A. Brennan, J. B. Smith, D. H. Herman, T. L. Flanagan, C. Linstrom, J. Voeinkle.*

Int. 1. State your name, age, residence and occupation.

Int. 2. State if you can, when the waterworks plant in Vicksburg was constructed.

Int. 3. State if you know from what source the water works company in Vicksburg receives its water supply, and how long it has received it from this source if you know?

Int. 4. What water have you been in the habit of drinking while residing in the city of Vicksburg?

Int. 5. Have you ever had occasion to use the Mississippi River water for domestic and manufacturing purposes?

Int. 6. If you have ever had occasion to use the Mississippi River water, state to what extent you have used such water, and from what point or points did you obtain said water?

Int. 7. Do you know the reputation of said water for wholesomeness, and if so, what is it?

Int. 8. From your experience and knowledge what is the character of said water for wholesomeness and manufacturing purposes?

Int. 9. If you know, how does the health of the people of the city of Vicksburg compare with the health of people of other cities of Mississippi and Louisiana, of the same size, and even of a smaller size, since the construction and operation of the water works plant?

Int. 10. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them or that may be material to the subject of this your examination, or the matters in question in this case; if yea, set forth the same and at large in your answer.

Cross-interrogatories.

X Interrogatory 1. State the distance, as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtains its supply of water northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtains its supply.

X Int. 3. Can you say whether the water discharged from the Yazoo river is good and wholesome, and fit for all purposes of domestic or manufacturing consumption.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution?

X Int. 5. State if it is not a fact that for the greater part
234 of its course, the Yazoo river does not pass over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is the fact, state if it is not true that the water in Yazoo river is generally considered bad, and that if it is used for drinking purposes, it is likely to produce malarial diseases.

X Int. 6. State if it — not a fact that the sewerage from a large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the water works company.

X Int. 7. State as fully as you can the size and length of the said Washington Street sewer.

X Int. 8. State as fully as you can the extent of sewerage carried by said sewer, and discharged through it into the Yazoo river, especially state if it is not a fact that nearly all of the business houses on Washington street have their water closets discharged into said sewer and particularly, does not the offal and excrecent from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish Club, Elks Club, opera

house, jail, St. Francis Xavier's college, Vicksburg sanitarium, city hall, and U. S. postoffice, and practically all of the dwellings on South street from Adams street west to Washington street, drain into and discharge through said sewer.

X Int. 9. State whether the said sewer was constructed before or since the water works plant was installed, and if before state as fully as you can about what year the said sewer was constructed.

X Int. 10. State what change has taken place since the construction of the water works in regard to point of discharge of the Yazoo river.

X Int. 11. State what change, if any, in regard to the opportunity of sewerage contamination of the water supply has taken place.

X Int. 12. State as fully as you can the general direction of the surface drainage from the city of Vicksburg, and particularly whether or not it is westward from the larger part of said city into the Yazoo river and Mississippi river, and along such part of the same as is within two miles of the intake pipe of said company.

X Int. 13. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage, and if you state that you have such knowledge state as fully as you can the extent of the contamination, and whether the water from said Yazoo river is good and wholesome and fit for domestic uses.

X Int. 14. State whether any part of the water taken and used by said water works company comes from the Yazoo river, and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

235 X Int. 15. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicksburg, and other consumers by said water works company, prior to the installation of the filter plant now in use.

X Int. 16. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 17. State as fully as you can whether all water so furnished as aforesaid, since the installation of said filter plant has been passed through said plant, and if you state that it has not, state how often said company has furnished such unfiltered water, and how long at a time.

X Int. 18. State whether such unfiltered water was pumped from basins containing sediment from water previously treated with chemicals before being passed through the filter:

X Int. 19. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals, which had been used in preparing water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers, and its odor and scent if it had any since the installation of the filter plant, and whether the same was not charged with mud, and other insoluble matter in excess of what it was when first taken from the river.

X Int. 20. State any tests or examinations you may have made with unfiltered water since the installation of the said filter.

X Int. 21. State the quality of the water supply used by said company when it is first pumped into its basins by said company, when it is first pumped into its basins and before the same has been treated in any way with chemicals or passed through the filter.

X Int. 22. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome and fit for all purposes of domestic or manufacturing consumption in its original state, as it is taken from the source of supply, and before it is treated in any way by chemicals or passed through the filter.

X Int. 23. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reason in full.

X Int. 24. If you cannot state that it is free from contamination state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 25. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good, wholesome water, state why you have not considered the same good and wholesome.

X Int. 26. If you cannot state that said water as taken from the source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 27. State as fully as you can to what tests or examinations you have put such water to in its original state as taken from
236 the source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes, state if you have any knowledge of the same in regard to uses not coming under any of your tests or examinations.

X Int. 28. If you have stated in answer to any of the foregoing interrogatories that the water as taken by said company from the source of supply falls short of the standard of purity above mentioned, viz. "That it shall be free from all sewerage, contamination, and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption," state the particular quality or ground wherein it falls short of such standard, and to what extent it fails or has failed to meet the required standard.

X Int. 29. State whether said company, prior to the installation of its filter treated the said water in any way by chemicals or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

X Int. 30. State whether said company maintained settling basins at its pumping station, and pumped the water from its source of supply first into such basins before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins, and how long the water was permitted to remain therein before pumping the same into the mains for the use of consumers.

X Int. 31. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 32. State, if you know, how long said basins were allowed

to stand without having the sediment from such water removed therefrom.

X Int. 33. State whether or not you filtered, or in any other way treated the water supplied you by said company, or any part thereof, before using the same, and if you state that you did, state why you found it necessary to filter or otherwise treat the same.

X Int. 34. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your reading or conversation, you have ever heard of such that was supplied with water taken from a stream which flowed through or by such city, town or village, at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know, have seen, or heard of such city, town or village, give the name and location of such.

X Int. 35. State, if you know, anything of the plant, that is, machinery, ways, means and appliances used by said water works company, in obtaining a supply of water and distributing the same to its several consumers, and if you state that you do, state and describe its machinery and appliances used in obtaining water from the source of supply and putting the same into its settling basins, what is the size and number of lines of pipe in use by said company, from its pumphouse to the Mississippi river, what is the number and size of the engine used in lifting or pumping water from the said
237 Mississippi river into the settling basins of said company, what is the capacity per day for taking water from the said Mississippi river, and putting the same into the settling basins now in use by said company, does the pumping engine or engines used by said company in so taking and lifting water from said river into said basins require to be moved or shifted as the said river rises or falls, and if you say it does, state what rise or fall of said river requires the same to be so shifted and state the time required for such shift, state if the machinery, ways or appliances now and heretofore in use by said company in lifting its water from the river and supplying the same in its basins is in duplicate so that one set can be kept in operation while the other is being shifted on the river bank.

W. J. VOLLOR AND
BRYSON & DABNEY,
For Def't.

Answers of J. Voeinkle.

Deposition of Jake Voeinkle, Taken on the 12th Day of February, 1904, by J. H. Short, Notary Public, in the Case of Vicksburg Water Works Co. *vs.* Mayor & Aldermen City of Vicksburg, Taken on Behalf of Plaintiff.

Ans. Int. 1. Jake Voeinkle, age 64, residence Vicksburg, Miss. Occupation engineer of the Vicksburg fire department. Have been in the employ of the fire department of the city of Vicksburg for the past 35 years, with the exception of one year.

Ans. Int. 2. The water works plant in the city of Vicksburg was accepted by the city of Vicksburg in 1889.

Ans. Int. 3. The source of the water supply of the water works in Vicksburg is the Mississippi river. It has received water from this source, and this source only, since its construction.

Ans. Int. 4. I have both a cistern and hydrant at my home, and use both for drinking, although I usually drink the hydrant water. I ran on the river for a number of years as a steamboat engineer and never drank any other kind of water, and always found it wholesome.

Ans. Int. 5. As I have already stated, I use the hydrant water in my home for domestic purposes. When I was engineer on a steamboat on the Mississippi river, we, of course, used the Mississippi River water in the boilers. I know the Vicksburg ice making plant has bored a well, but used Mississippi River water obtained from the Vicksburg water works, in preference to the well water. I have also used Mississippi River water in the fire engines, and found no objection to it.

Ans. Int. 6. See answers to previous interrogatories. The water that I have used on the steam boat was obtained directly from the river and that for other purposes was obtained from the
238 hydrants.

Ans. Int. 7. I have never heard Mississippi River water condemned. As far as I know it is very wholesome.

Ans. Int. 8. My experience and knowledge of this water is that there is no water more wholesome for drinking purposes, and for manufacturing purposes, I have never found any water that is better. There is nothing better.

Ans. Int. 9. I have no knowledge of the facts referred to in this question.

Ans. Int. 10. I do not know.

Cross-interrogatories propounded to JAKE VOEINKLE, a witness for plaintiff, his answers to the same being as follows:

Ans. X Int. 1. The distance as well as I can estimate it, from the intake through which the Vicksburg Water Works Co. obtains its supply of water, to the point where the Yazoo river now empties into the Mississippi, through the new canal, is between one half, and a mile.

Ans. X Int. 2. The Yazoo river does empty into the Mississippi, on the same side that the said water works company obtains its supply.

Ans. X Int. 3. I have drank the water from the Yazoo river, when I was steamboating without any bad effects, but I do not know whether it is as good and wholesome as the Mississippi River water or not, I cannot say.

Ans. X Int. 4. I do not know.

Ans. X Int. 5. It is a fact that for the greater part of its course, the Yazoo river does pass over and through a low delta country, but I do not know how the soil of it was deposited, whether it was deposited from overflow water from the Mississippi river or not. I cannot say whether the Yazoo River water is generally considered

bad, have never heard of it having such a reputation, but I know that there is a great deal of malaria in that country. I don't know what the malaria comes from.

Ans. X Int. 6. It is a fact that the sewerage from a large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo River canal, about one and one-half miles or two miles from the intake pipe of the water works company.

Ans. X Int. 7. About seven blocks long, and at the south end it is about four feet, as near as I can remember, and it is about ten feet at the north end, or mouth.

Ans. X Int. 8. I do not know the amount of sewerage emptied into said canal by this sewer. I do not know how many business houses on Washington street have their water closets discharge into said sewer, but I know that there are some. I know the Valley Dry Goods Company's water closet has a connection with the sewer. I have no personal knowledge of the public buildings and hotels mentioned in the question, having connection with the sewer.

Ans. X Int. 9. The sewer was constructed long before the
239 water works plant was built. It was built somewhere about 1870 or 1871.

Ans. X Int. 10. When the water works was constructed, the mouth of the Yazoo river was about six miles north of what is known as the lower landing at Vicksburg; now the Yazoo River canal empties into the Mississippi river at the Vicksburg lower landing. There is a difference of about six miles between the distance of the mouth of the said Yazoo river from the intake *mile* at present, from where that was when the water works was constructed.

Ans. X Int. 11. I do not know anything about what change has taken place.

Ans. X Int. 12. As near as I can tell, the surface drainage from the city of Vicksburg is westward from said city in the Yazoo River canal and the Mississippi river, and most of it is within two miles of the intake pipe of said water works company.

Ans. X Int. 13. I have no knowledge of the extent of the contamination of the water of the Yazoo river by such sewerage from surface drainage, and the Washington Street sewer. I am not competent to analyze the water, and as to the wholesomeness of the Yazoo River water, and its fitness for domestic purposes, I cannot say any more than I have already stated in previous answers.

Ans. X Int. 14. I do not know whether the intake pipe of the water works takes any of the Yazoo River water, or whether it is all strictly Mississippi River water.

Ans. X Int. 15. The water furnished to the mayor and aldermen of the city of Vicksburg, and other consumers by said water works company, prior to the installation of the filter plant, now in use, was generally muddy. The condition of the water furnished depended greatly on the stage of water in the Mississippi river.

Ans. X Int. 16. The water now furnished, since the installation of said filtration plant, is clear.

Ans. X Int. 17. Since the installation of the filtration plant by the water works company, the water has been generally clear; I do not

remember but one occasion on which the water was otherwise, and then there was some kind of a break down at the plant, and they had to pump the water direct from the river.

Ans. X Int. 18. I have no knowledge whatever as to this.

Ans. X Int. 19. I do not know whether such unfiltered water that was furnished on the occasion referred to by me, in the answer to the previous interrogatory, passed through any chemicals or not. The appearance of the water on that occasion was muddy, but I detected neither odor nor scent. I cannot say that it was charged with any more mud, or other insoluble matter than the water would be if taken directly from the river, in fact, it had the appearance of having been pumped directly from the river into the pipes.

Ans. X Int. 20. I have never made any examinations since the filtration plant has been installed.

Ans. X Int. 21. It is just like ordinary Mississippi River water, and I like it in its natural state. The mud never bothered
240 me, in fact I prefer it to the clear water now furnished, but the clear water is prettier, and it is generally preferred by a majority of the people.

Ans. X Int. 22. I cannot say whether the water taken and used by the water works company contains any sewerage, or is contaminated in any way, because I am not a chemist, and have never analyzed it. I cannot say that it is, nor that it is not; I think that the water furnished is as good and wholesome as if taken directly from the river. I do not think that the chemicals that are put in it to clarify the water injures it in any way.

Ans. X Int. 23. I am not unwilling to state, but I simply have no knowledge on the subject.

Ans. X Int. 24. I cannot state whether it is free from contamination, or otherwise. I have no reasons for not stating, and I have *ho* means of observing, or knowing whether the water is contaminated I have never had any bad effects from the water brought directly to my personal observation.

Ans. X Int. 25. There has been occasions on which the water has been excessively muddy, but I have generally considered it wholesome for *fomestic* and manufacturing purposes, and have never observed any bad effects from it.

Ans. X Int. 26. As far as I am competent to pass on the wholesomeness of this water for domestic and manufacturing purposes, the only difference that I have observed is that at times it has been very muddy. As stated in a formed answer, since the installation of the filter, the water has been muddy only on one occasion.

Ans. X Int. 27. I have not made any tests or examinations, in fact, I am not competent to do so, but have used the water as taken from the waterworks for drinking purposes at my home, and also used it to make steam in the fire engines.

Ans. X Int. 28. In answer to this question, I will say, that if the water is taken by the water works company from its source of supply, falls short in any regard, it has in the past not been as clear as it should be. So far as it being contaminated, or containing any sewerage, I am not able to say. As already stated, I have considered

the water, good, wholesome water, fit for all purposes, and since the filter has been put in, the water has been clear enough to suit anyone. I would say, that it would require a chemical analysis to show that the water contained any sewerage, or other contamination, as I have never observed any smell or odor to it.

Ans. X Int. 29. They only used the filtering basins, and no chemicals were used. It was simply passed from layers of sand and gravel.

Ans. X Int. 30. They had, and used, settling basins, four or five sections of them. I never measured them, but from their appearance I would say they contained between two and three hundred thousand gallons apiece. The length of time that the water was retained in these settling basins depended entirely on the demand of the consumers, the smaller the demand, the longer the water
241 remained in the settling basins. I cannot say what was the average length of time the water remained there.

Ans. X Int. 31. I do not know how long it was allowed to remain there, so I cannot say. Of course the longer it remained in the settling basins, the clearer it became.

Ans. X Int. 32. I know that these basins were clean. Mr. McFarland borrowed hose from me on one or two occasions. I have no means of knowing how often they were cleaned out.

Ans. X Int. 33. I never filtered or treated the water supplied by the water works company in any way. I do not like filtered water, I drink the water just as it is supplied by the company, and nothing that it contains bothered me. At the engine house they have a filter, and when I want a drink of water I take it directly from the pipes, and never drink the filtered water.

Ans. X Int. 34. I have no knowledge of any of the matters and things touched on in this question.

Ans. X Int. 35. I am fully acquainted with the pumping station of the water works company, and have been since its inception. Formerly they had two reciprocating pipes to supply water from the river to the settling tanks. It was necessary on account of the shifting stage of the water in the Mississippi river, to move these pumps several times during the course of a year. While they were moving them, they had to shut off the supply of water furnished to the city. About a month ago a centrifugal pump, with a claimed capacity of five million gallons of water per day was installed in a well, the bottom of which is only seven feet above the water in the Mississippi river at its lowest stage. It is now unnecessary to ever move this pump, barring some unforeseen accident. The well in which this pump is installed is cemented, and otherwise protected, and as far as can be seen, all precautions have been taken to guard against accidents of any kind, so that the supply of water will continue uninterrupted. There is only one pump of the kind described, but the engineer of the pumping plant informed me that all of the pieces of the said pumping system, that were liable to breakage, were in duplicate, so that in case of an accident, the same could be repaired in a very short time. The old river pumps formerly in use, are to be put in perfect repair, and used in case of emergency.

JACOB VOEINKLE.

STATE OF MISSISSIPPI, *County of Warren, ss:*

Sworn to and subscribed before me, this 12th day of February, 1904.

J. H. SHORT,
Notary Public.

[SEAL.]

242 *Answers of J. M. A. Brennan.*

Deposition of J. M. A. Brennan, witness for plaintiff, in the case of Vicksburg Water Works Company *vs.* Mayor and Aldermen of the City of Vicksburg, to interrogatories and cross-interrogatories *and cross-interrogatories* propounded by attorneys for plaintiff and defendant, taken before J. H. Short, a notary public, on the 23d day of February, 1904.

Witness testified as follows:—

Ans. Int. 1. J. M. A. Brennan, age 49 years, residence Vicksburg, in the liquor business.

Ans. Int. 2. It was about 1883.

Ans. Int. 3. From the Mississippi river, and has ever since its construction.

Ans. Int. 4. The water from the water works supply.

Ans. Int. 5. It was the Mississippi River water that I used for domestic purposes, supplied by that company.

Ans. Int. 6. Yes, at my residence, for drinking and cooking purposes, obtained from the water supply company.

Ans. Int. 7. I do not from my personal knowledge, except by the use of the said water furnished by the water supply company, and used at my residence as above stated, for about 15 years.

Ans. Int. 8. Good.

Ans. Int. 9. As far as I know, the health of our people compares favorably with any city of its size.

Ans. Int. 10. None that I know of.

Answers of J. M. A. Brennan to Cross-interrogatories.

Ans. X Int. 1. About one half a mile.

Ans. X Int. 2. Yes.

Ans. X Int. 3. I do not know anything about that, as I understand it, the Mississippi River water, you may get some Yazoo River water, now.

Ans. X Int. 4. The Washington St. sewer empties into the Yazoo now at the north of the city, which is about two miles from the intake pipe of the Vicksburg Water Works Company.

Ans. X Int. 5. The greater portion of the course of the Yazoo river to my knowledge, passes through a low and delta country, said soil not being deposited from overflow water from the Mississippi river. There are hills and bluffs north of the Yazoo Valley R. R. bridge on the east side of the Yazoo river, that are not low, delta soil. I would say extending six or seven miles north of said bridge.

I do not know that the water of the Yazoo river is considered bad, and cannot recall that I ever heard that it was.

Ans. X Int. 6. Yes.

Ans. X Int. 7. The length of the sewer is about 7 blocks long. The size of the sewer is about 15 feet in diameter, I think.

243 Ans. X Int. 8. I believe this to be a fact.

Ans. X Int. 9. The sewer was constructed in 1870, or 1871.

Ans. X Int. 10. At the time of the construction of the water-works, the Yazoo river emptied into the Mississippi river about five miles above where the water works plant is situated. Now the Yazoo river empties into the Mississippi about one half mile above the intake pipe of the water works company, by way of a canal or channel that has since been constructed.

Ans. X Int. 11. The sewer contamination is very much improved on account of the Yazoo rizer, which is a running stream passing into the canal and into the Mississippi river.

Ans. X Int. 12. It does, from Cherry street. I mean the surface drainage.

Ans. X Int. 13. I have no knowledge of the extent of contamination, and as for the water, I still use it for the same purpose that I always did, and I find it wholesome, and fit for domestic purposes.

Ans. X Int. 14. I do not know of my own knowledge whether the water works company are using the Mississippi River water, or the Yazoo River water, but I do know that the Yazoo River water empties into the Mississippi about one half mile north of the intake pipe of the water works company.

Ans. X Int. 15. I believe it to be the same water that I used at my residence prior to the construction of the filtration plant of the Vicksburg Water Works Company plant; the water was muddy.

Ans. X Int. 16. Since the institution of the said filtration plant the water is clear.

Ans. X Int. 17. I think *on* two or three times, to the best of my recollection, since the institution of the filtration plant, the water at my residence was quite muddy, lasting over two days.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. I do not know. On one or two occasions the water appeared muddy, but I could detect no scent or odor about it.

Ans. X Int. 20. I have made none.

Ans. X Int. 21. It depended upon the stages of the river, if the water was high, it was muddy, if it was low, it was clear.

Ans. X Int. 22. I know nothing of the quality of the water, or whether it is contaminated from sewerage or not, but I do know it is wholesome and fit water for domestic purposes.

Ans. X Int. 23. I do not know that it is free from sewerage, that depends upon the current of the Mississippi river where the Yazoo enters into the Mississippi river about one half mile north of the intake pipe of the said water works company.

Ans. X Int. 24. I do not know of any contamination from use of the water.

Ans. X Int. 25. I always considered it good and wholesome.

Ans. X Int. 26. I have no complaint to make of its quality, or character.

Ans. X Int. 27. I have made no tests, other than the use of
244 the water for all domestic purposes, and the good health that my family enjoys.

Ans. X Int. 28. I have no complaint to make.

Ans. X Int. 29. Not to my knowledge.

Ans. X Int. 30. When the water works company plant was first erected they used two basins for filtering purposes, as I understand it. I think they used them but for a short while, when they were set aside for what reason, I do not know.

Ans. X Int. 31. I do not know.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. Yes, I have a small filter at my home, which the water passes through before used. My reason for getting it was to make the water clear, because it used to be very muddy.

Ans. X Int. 34. I do not think there is another town on earth situated like Vicksburg; I have never heard of any.

Ans. X Int. 35. I am not a mechanic, but a sinful politician.

J. M. A. BRENNAN.

Sworn to and subscribed before me, this 23 day of Feb'y, 1904.

[SEAL.] J. H. SHORT,
Notary Public.

Answers of F. Streuby.

Deposition of Mr. F. Strueby to Interrogatories and Cross-Interrogatories Propounded by Attorneys for Plaintiff and Defendant, Taken Before J. H. Short at His Office February 17th, 1904.

Ans. Int. 1. F. Strueby, age 63; residence Piazza hotel; occupation manager Lever Bros. oil mills, Vicksburg, Mississippi.

Ans. Int. 2. I do not know.

Ans. Int. 3. I know it receives it from the Mississippi river, but I do not know how long they have been getting it from that source.

Ans. Int. 4. Such as the hotels furnished, that is, I presume, Mississippi River water, taken from the water works.

Ans. Int. 5. Yes, have been using it for nearly ten years now, for manufacturing purposes.

Ans. Int. 6. The water I have been using for manufacturing purposes I have taken from the Vicksburg water works, who deliver it to me at the mill through their system of pipes.

Ans. Int. 7. My judgment is that it is good and wholesome water.

Ans. Int. 8. Good.

Ans. Int. 9. I think it compares very favorably.

Ans. Int. 10. I know of no other matter or thing that would be of advantage to either party of the controversy.

245 *Answers of F. Strueby to Cross-interrogatories.*

Ans. X Int. 1. Well, I should judge it would be about one quarter of a mile. Yes, I should judge the intake pipe is about one quarter of a mile below the mouth of the Yazoo River canal.

Ans. X Int. 2. It does.

Ans. X Int. 3. I know of no reason why it should be otherwise.

Ans. X Int. 4. I cannot. I do not know whether it is or not; I have never examined it.

Ans. X Int. 5. The country that it passes through is similar to the delta that the Mississippi passes through. I believe that the soil through which the Yazoo river flows, has been largely deposited by the overflows of the Mississippi river. I do not know that the water in this river is generally considered bad, and unfit for drinking purposes, nor do I know that it produces malarial diseases.

Ans. X Int. 6. There is such a sewer on Washington street; it empties into the Yazoo canal near the Valley passenger depot, or near the foot of Main street. I do not know the distance from the mouth of this sewer to the canal, or from the mouth of the sewer to the intake pipe of the water-works company.

Ans. X Int. 7. I have no knowledge of where it begins, nor the size of it.

Ans. X Int. 8. I have no positive knowledge of what goes into it, nor the amount of sewerage discharged by it. I have no personal knowledge of what houses have their water closets connected with this sewer, except that I am informed that Piazza hotel's water closets discharge into it.

Ans. X Int. 9. I do not know.

Ans. X Int. 10. The Yazoo river used to discharge into the Mississippi river about five miles above the present discharge.

Ans. X Int. 11. That would require an examination, and I have no knowledge of the matter.

Ans. X Int. 12. The direction of the surface drainage from the city of Vicksburg is generally westward into the Yazoo River canal, and the Mississippi river. The territory covered by such drainage, I should judge, is within two miles of the intake pipe of said water works company.

Ans. X Int. 13. I have no knowledge.

Ans. X Int. 14. I am unable to answer this question, because I have made no actual observations. I would state, however, that I have some engineering knowledge, and that in my opinion, knowing that all forces come at a straight and direct line, would say that the current of the Mississippi river would strike the eastern bank just about the mouth of the Yazoo canal, and would be deflected by that bank just about that point; this would throw the water of the Yazoo canal, which empties into the Mississippi river at that point, on to the opposite, or western shore, the greater bulk of the water thus discharged by the canal being carried over in that direction, thus
246 leaving very little of the Yazoo River water to be taken up by the intake pipe of the water works company. I attach a little

diagram, marked Exhibit "A," and forming a part of this deposition. I do not know anything about the wholesomeness of the water from the Yazoo river, but the water so taken up by the intake pipe of the water works company should be good and wholesome water.

Ans. X Int. 15. The character of that water was always such as the Mississippi river furnishes at its different stages, some times very muddy, and at other times, at low water stage, quite clear.

Ans. X Int. 16. It has been, with one or two exceptions, perfectly clear.

Ans. X Int. 17. With the one or two exceptions above referred to, the water has been perfectly clear, as stated. The occasions referred to by me was caused by break-downs at the power house, and they were of short duration. I do not know when they occurred, nor the exact duration.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. I do not know whether such unfiltered water so furnished was contaminated with chemicals, which had been used in preparing the water before it passed through the filter, because I have made no chemical analysis of it. The water on occasions when it came to me unfiltered, was muddy in appearance, but had no scent or odor that I recall.

Ans. X Int. 20. I have never made any.

Ans. X Int. 21. It is just ordinary Mississippi River water.

Ans. X Int. 22. I do not know anything about the sewerage. I do not know anything about its wholesomeness, but I know it is good for manufacturing purposes. It is good for manufacturing purposes in its original state, but it is better with the mud taken out.

Ans. X Int. 23. I do not know.

Ans. X Int. 24. I do not know.

Ans. X Int. 25. I have already stated that I have at all times considered it good for manufacturing purposes, and I have no knowledge of it in domestic uses. It always came up to the standard of purity.

Ans. X Int. 26. I have already stated that it did not fall short of such standard.

Ans. X Int. 27. I have made no tests or examinations.

Ans. X Int. 28. I have not stated that it fell short of the desired standard.

Ans. X Int. 29. I do not know.

Ans. X Int. 30. They did maintain settling basins at its pumping station, and pumped the water from its source of supply into said basins before delivering to consumers. I do not know the size of such basins, but I do know they were quite large.

Ans. X Int. 31. It certainly was benefited by said basin, it was allowed to settle, but I do not know the extent.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. I do not know.

247 Ans. X Int. 34. I can only answer that by saying I have made no observations as to that.

Ans. X Int. 35. To answer this question it would be necessary to

make a thorough survey of the plant, which I have not made. I therefore cannot answer the question.

F. STREUBY.

STATE OF MISS., *Warren County:*

Sworn to and subscribed before me this 17th day of February, 1904.

[SEAL.] J. H. SHORT,
Notary Public.

(Here follows diagram marked page 308½.)

248 *Answers of E. S. Butts.*

Deposition of E. S. Butts to interrogatories and cross-interrogatories propounded by attorneys for plaintiff and defendant *In re* Vicksburg Water Works Company *vs.* Mayor & Aldermen, City of Vicksburg, taken before J. H. Short, notary public, on Friday, February 19th, 1904.

Ans. Int. 1. E. S. Butts, over 21, president of the American national bank; residence Vicksburg, Mississippi.

Ans. Int. 2. It was constructed about fifteen years ago, or about 1889.

Ans. Int. 3. From the Mississippi river, and that has been the only source since its construction.

Ans. Int. 4. Cistern water.

Ans. Int. 5. I have used the Mississippi River water at my home for baths and for cooking, but have not used it for manufacturing purposes.

Ans. Int. 6. I have had no occasion to use it except that which was obtained from the hydrants of the Vicksburg water works.

Ans. Int. 7. It has always been recommended as being wholesome.

Ans. Int. 8. As stated, I have had no experience in manufacturing purposes, and have only used it in bath and kitchen purposes, and found it very satisfactory for those purposes.

Ans. Int. 9. Its sanitary condition will compare favorably with any other of these towns and villages. The health is very good, and as good since the construction of the water works, as it ever was before.

Ans. Int. 10. I know nothing further than I have stated.

Answers of E. S. Butts to Cross-interrogatories.

Ans. X Int. 1. I do not know.

Ans. X Int. 2. It does.

Ans. X Int. 3. I cannot say.

Ans. X Int. 4. I cannot say.

Ans. X Int. 5. I have no personal knowledge of this. I do not know that the water of the Yazoo river is generally considered bad. I do not know whether, if used for drinking purposes, it is liable to produce malarial diseases; I have never heard that it did.

Ans. X Int. 6. I do not know the distance, but there is a large sewer that empties into the Yazoo River canal just on the northern limits of the city of Vicksburg. As stated, I do not know the distance the mouth of that sewer is from the intake pipe of the water works plant.

Ans. X Int. 7. I could not tell the size. I think it runs
249 from the Piazza hotel; it runs along Washington street about six squares but I do not know the dimensions.

Ans. X Int. 8. I do not know the extent of the sewerage carried by this sewer. I do not know to what extent the water closets of the business houses discharge into this sewer. I do not know whether any or all of the water closets from the public buildings named in the question, are discharged into the sewer.

Ans. X Int. 9. It was constructed long before the water works plant was built; I think it was built in 1870.

Ans. X Int. 10. It used to discharge about *about* ten miles above the intake pipe of the water works, but now it comes through a canal very near the intake pipe, but I do not know how near. I mean by "very near," within two or three hundred yards.

Ans. X Int. 11. I have no knowledge of what opportunity for sewerage contamination has been occasioned by the change above referred to.

Ans. X Int. 12. The drainage is to the west, and discharges into the Yazoo River canal, and Mississippi river about two miles of the intake pipe of the water works.

Ans. X Int. 13. I have no knowledge of the extent of the contamination, and I do not know anything about whether the Yazoo River water is good and wholesome, and fit for domestic purposes.

Ans. X Int. 14. I do not know.

Ans. X Int. 15. It was usually the character of the Mississippi River water to be quite muddy, but it is good for ordinary purposes, and I consider it wholesome, and drink it at places.

Ans. X Int. 16. Well, it is a very nice, clear water, and it is pleasant to the taste, and drink.

Ans. X Int. 17. They established this filtration plant, as near as I can remember, in May or June, and I do not know of but one occasion and that was for one day, or a short duration, in which they did not furnish filtered water.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. In answer to the first part of this question, I say I do not know. It was slightly muddy in appearance, but had no odor; there was no more mud present than if it had been taken directly from the Mississippi river, as far as I can tell.

Ans. X Int. 20. I have made no tests nor examinations.

Ans. X Int. 21. The water is as good as any Mississippi River water.

Ans. X Int. 22. I always considered it free from contamination, or sewerage and always considered it fit for all purposes, for domestic and manufacturing uses.

Ans. X Int. 23. I do state that it is apparently free from sewerage.

Ans. X Int. 24. I do not know of any contamination, and I have no reasons to believe that there is any.

Ans. X Int. 25. I have considered it wholesome, and used it as previously stated.

250 Ans. X Int. 26. The only objection that I have ever had with this water, was, that it was muddy.

Ans. X Int. 27. I have made no tests or examinations of this kind, in its original state as taken from its original source of supply, and

have no knowledge of uses not coming under my examinations or tests.

Ans. X Int. 28. It is not falling short, or failing to meet the requirement for all domestic uses, or manufacturing purposes.

Ans. X Int. 29. I do not know.

Ans. X Int. 30. Said company did maintain settling basins at its pumping station, and pumped the water from its source of supply into said basins before it furnished it to its consumers. I do not know the size or capacity of these settling basins, or how long the water was allowed to remain in them before being pumped for the use of consumers.

Ans. X Int. 31. Naturally it would be better, because it would permit the sediment to fall to the bottom.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. I did not filter the water furnished me, nor treat it in any other way.

Ans. X Int. 34. I do not know of any such city, town or village referred to.

Ans. X Int. 35. I know nothing of the details of the water works plant, or of the manner of pumping the water, either before the installation of the filter, or since the installation of the filter, in fact, I know nothing of its manner of operation at all.

E. S. BUTTS.

COUNTY OF WARREN, *State of Miss.:*

Sworn to and subscribed before me, this 19th day of Feb'y A. D. 1904.

J. H. SHORT,
Notary Public.

[SEAL.]

Answers of J. B. Smith.

Deposition of J. B. Smith in answer to interrogatories and cross-interrogatories propounded by attorneys for plaintiff and defendant in the case of Vicksburg Water Works Co. *vs.* Mayor & Aldermen City of Vicksburg, taken before J. H. Short, notary public, on Friday, February 19th, 1904.

Ans. Int. 1. J. B. Smith, age 43, residence Vicksburg, Mississippi, occupation plumber and contractor.

Ans. Int. 2. The water works plant in the city of Vicksburg was turned over to the city in 1889.

Ans. Int. 3. It receives its source of supply from the Mis-
251 sissippi river, I have never heard of any other source of supply. It has never had any other source of supply.

Ans. Int. 4. I drink the river water lately. Up to about four years ago I used cistern water.

Ans. Int. 5. I use it at my home for bathing, and washing clothes, and in the kitchen, in fact, for all domestic purposes. Up to a few years ago I had a boiler in use in my shop, in which I used no other

water but the Mississippi River water, obtained from the hydrants of the Vicksburg water works.

Ans. Int. 6. I used it at my home for all domestic purposes, and in my shop, as above stated, and obtained the same from the hydrants of the Vicksburg Water Works Company.

Ans. Int. 7. Well, I consider it better than cistern water, or I would not drink it. The steamboatmen all use it, would not use anything else. I think the majority of people consider it favorably.

Ans. Int. 8. From my experience and knowledge of the water, and the character of it, it is wholesome, in my opinion. I have always found it all right for a boiler, never had any trouble with it.

Ans. Int. 9. I cannot answer this question positively, because I have never examined statistics, but I think that on the whole, the people of Vicksburg are very healthy, and I do not think there is as much sickness now, as there was before the construction of the water works plant.

Ans. Int. 10. I do not.

Cross-interrogatories, J. B. Smith.

Ans. X Int. 1. I think the distance above referred to is hardly half a mile.

Ans. X Int. 2. It does, yes, the same side, both on the east side of the Mississippi river.

Ans. X Int. 3. I do not know anything about that.

Ans. X Int. 4. I cannot say anything about that.

Ans. X Int. 5. I do not know anything about the country through which the Yazoo river passes. I do not know that the Yazoo River water is generally considered bad, and I do not know anything about it producing malarial diseases when used for drinking purposes.

Ans. X Int. 6. Yes, there is a sewer pipe just about two miles above the intake pipe of the water works company.

Ans. X Int. 7. It is about seven or eight feet in diameter, and it is about seven blocks long.

Ans. X Int. 8. I think there is about, between four and five hundred water closets empty into or are connected with the Washington Street sewer, and a great number of urinals, wash basins, and bath tubs connected with the said sewer. It is a fact that nearly all of the business houses on Washington street have their closets discharge into said sewer, and it is also true that the offal and excrement from water closets, and other sources, from the Washington hotel,
252 Carroll hotel, Piazza hotel, Jewish Club, Elks Club, opera house, jail, St. Francis Xavier's college, Vicksburg sanitarium, city hospital, United States post-office, and practically all the dwellings on South street, from Adams street, west to Washington street, drain into and discharge into the said sewer.

Ans. X Int. 9. The sewer was there as a gutter long before the water works was constructed. I am not sure, but to the best of my recollection the said sewer was constructed about 1870.

Ans. X Int. 10. At the time of the construction of the water works plant, the Yazoo river emptied into the Mississippi river at Young's point, a distance of several miles above said city, now, by reason of the construction of the Yazoo canal, the said Yazoo river empties into the Mississippi river at what is known as the Lower landing, at Vicksburg, only about half a mile above the intake pipe of the said water works plant.

Ans. X Int. 11. It would seem to me that it would drive the sewerage right under, or into the pipes.

Ans. X Int. 12. The general direction of such drainage may be called westward, but I think that it is almost divided, a greater portion of it going down through Stouts bottom. That that drains west, is within a distance of two miles, I should say, of the intake pipe.

Ans. X Int. 13. I have no knowledge of the extent of the contamination referred to.

Ans. X Int. 14. I think they get some of both, of course it looks like, as the canal being down there, it would be most Yazoo River water. Personally I do not know, but I have always heard that the Yazoo River water is unhealthy.

Ans. X Int. 15. It was muddy water, but I considered it pure; I used to drink it all the time.

Ans. X Int. 16. Well, it is mighty pretty water to my knowledge, what I have seen of it. I consider it perfectly healthy and pure.

Ans. X Int. 17. As well as I can remember, there has only been one breakdown since the installation of the filtration plant, when the water was furnished to the consumers direct from the river, in its muddy state. As nearly as I can remember, the period during which the said muddy water was furnished, lasted four or five days.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. To the first part of this question I answer that I do not know, at one time it was pretty black and muddy, but I do not remember any scent or color. From its appearance I would not judge that it was charged with more mud than if taken directly from the river.

Ans. X Int. 20. I have made no tests or examinations, other than simply looking at the water, during the course of my business.

Ans. X Int. 21. It is just the ordinary river water, varying according to the different stages of the river.

Ans. X Int. 22. I do not know whether the water as taken and used by the company is free from sewerage and contamina-
253 tion, or not, and I do not consider it good for all purposes of domestic and manufacturing consumption in its original state, before it is treated in any way, or passed through the filter.

Ans. X Int. 23. I do not know whether it is free from sewerage. I have no reasons for refusing to answer.

Ans. X Int. 24. I do not know whether it *it* free from contamination or not. I do not know whether it is pure or not, with all this sewerage running into the Yazoo river.

Ans. X Int. 25. Well before the Yazoo canal emptied into it, I

used to drink water right out of the plant, without filtering it in any way, but now, I do not care to drink river water as taken from the pipes without it being filtered.

Ans. X Int. 26. I think that it has fallen below the standard, because I fear that the sewerage that empties from the Washington Street sewer into the Yazoo river, contaminates the source of supply.

Ans. X Int. 27. I have never put it to any tests, and I have no such knowledge.

Ans. X Int. 28. I do not think the water is pure, because of the contamination of the sewer above referred to.

Ans. X Int. 29. I do not know.

Ans. X Int. 30. I think they do maintain settling basins. I do not know the size of the basins, and I do not know how long the water was allowed to remain in there.

Ans. X Int. 31. Why of course the water was benefited, and improved by allowing it to remain in the settling basins.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. At my shop, where I used the water for drinking purposes, we had a small filter. The water we used in the boiler was not filtered. We did not treat the water in any other way.

Ans. X Int. 34. I never did.

Ans. X Int. 35. I do not know anything of the plant, I have only been down there once or twice in my life, and never made any examination of said plant.

J. B. SMITH.

STATE OF MISS., *County of Warren:*

Sworn to and subscribed before me, this 19th day of Feb'y.

[SEAL.] J. H. SHORT,
Notary Public.

Deposition of Charles Linstrom, Taken at Vicksburg, Miss., Feb'y 25th, 1904.

Answer to interrogatory No. 1. My name is Charles Linstrom, age 56, residence Vicksburg, Miss., and occupation master mechanic of the Y. & M. V. Ry.

Ans. to Int. 2. I don't know exactly; sometime previous to 1890.

254 Ans. to Int. 3. From the Mississippi river; always gotten its water from that source.

Ans. to Int. 4. I have been in the habit of drinking waterworks water at the shops, and cistern water at home. I now also use the waterworks water at home, since I moved in my new house.

Ans. to Int. 5. Yes, I use it at my home for domestic purposes, and use it at the Ry. shops altogether for making steam, and drinking purposes also.

Ans. to Inter. 6. We have used the Mississippi River water both for making steam in the boilers in *our* the various shops here at Vicksburg, also for all the locomotives running out of here. Previous

to the construction of the waterworks here we pumped Mississippi River water with our own pump and through our own pipes, and the supply was obtained from the Mississippi river, direct from a point at the lower landing of what is known as Klienstown.

Ans. to Int. 7. The majority of those people who know anything about the matter and have used it say that Mississippi river, say that it is the purest and most healthy water to be had.

Ans. to Int. 8. My experience has been that as far as wholesomeness is concerned, it is all right. It is good water for making steam.

Ans. to Int. 9. From what I know of the matter, I think that the city of Vicksburg is equally as healthy as any city in the State of Mississippi, or Louisiana. I think it is as healthy now as before the waterworks plant was constructed.

Ans. to Int. No. 10. I don't know of anything.

X 1. I should judge it is about one half of a mile.

X 2. Yes.

X 3. I would say yes.

X 4. I could not say, I don't know? I have never made any analysis of it.

X 5. I am not familiar with the country up there. I don't know whether it is considered bad, nor whether it is liable to produce malaria diseases.

X Int. 6. I know there is a sewer that enters into the Yazoo River canal at about the distance stated.

X 7. I don't know anything about the dimensions of this sewer.

X Int. 8. I do not. I am not familiar with the amount of sewerage emptied into this sewer, and have no knowledge of what houses or public buildings have their water closets or bath tubs connected with the said sewer.

X 9. The sewer was constructed long before the waterworks plant It was built before I came to this town.

X 10. When the waterworks plant was built, the Yazoo river emptied into the Mississippi river at a point several miles north of the intake pipe of the waterworks company, now, since the construction of the canal the water from the Yazoo river enters the Mississippi river only about a half a mile north of the intake pipe.

X No. 11. I don't know what effect this change would have on the water pumped up by the water works company.

255 X Int. 12. The general direction of the surface drainage from the city of Vicksburg is generally westward from said city, into the Yazoo canac and Mississippi river, and most of it is emptied into these two streams within two miles of the said intake pipes.

X Int. 13. I don't know the extent of contamination of the Yazoo River water by the sewerage, and I don't know whether the water from that river is good and wholesome, and fit for domestic uses or not.

X Int. 14. I don't know whether any of the water taken up by the water works company is Yazoo River water or not. I consider the water now furnished by the water works company good and wholesome, and fit for domestic purposes.

X Int. 15. The water used before the installation of the filtration plant. I do not consider as good and wholesome as the water now furnished, on account of the mud that was then present in the water.

X Int. 16. The water furnished since the installation of the filter plant is good and wholesome, and pretty good water.

X Int. 17. I don't think I have any recollection of it, except probably once or twice, and it lasted only a very short time. I mean by a very short time, a day, or about twelve hours.

X Int. 18. I do not know.

X Int. 19. I have no knowledge of this. On the two occasions referred to by me, when unfiltered water was furnished. I do not think that the water was charged with mud, and other insoluble matter in excess of what it was when first taken from the river, and I am quite sure that it had no smell or odor.

X Int. 20. I have made no tests or examinations.

X Int. 21. The quality of the water used by the waterworks company is the Mississippi river, as it changes with the different stages of the river; sometimes, of course, it is muddier than others, according to whether the river is rising or falling.

X Int. 22. I don't know whether it is free from sewerage contamination or not, but personally I consider it good and wholesome and fit for domestic purposes, otherwise I would not allow my family to use it. As far as I can see, the water is as good before it is treated, as afterwards, of course, the water is much prettier and clearer after being treated.

X Int. 23. I do not know, I have never analyzed the water. I have no reason for being unwilling to say why it is not free from sewerage.

X Int. 24. As previously stated, I don't know that it is free from contamination, and have no reason for not being willing to so state. I have no knowledge of the water being contaminated.

X Int. 25. I have stated that I do consider it good and wholesome.

X Int. 26. I do not consider that it has fell short of such standard, either for domestic or manufacturing purposes.

X Int. 27. I have not put it to any tests or examinations,
256 and I don't know anything about the matter spoken of in the last part of this question.

X Int. 28. I have not stated in any of my previous answers that the water falls short of such standard. If I have ever found any objection to it, it is because sometimes it has not been as clear as I should like it, for drinking purposes; this, however, effected the appearance of the water rather than the quality.

X Int. 29. They have settling basins, but I have no knowledge of them ever having used any chemicals.

X Int. 30. It did use settling basins, but I don't know the size of them, and neither do I know how long the water was allowed to remain in the settling basins.

X Int. 31. The only benefit they would get from it would be to get the sediment or to get the mud out of the water, and render it clearer.

X Int. 32. I don't know anything about that.

X Int. 33. We used the water just as we got it from the water works.

X Int. 34. No, I could not say that I do.

X Int. 35. I was around the water works a good deal when it was first put in; when the pumps were located on the river bank. I have not been down there since the new pumps were put in. When I was acquainted with the plant, it was necessary to move the pumps with the different stages of the Mississippi river.

CHAS. LINSTROM.

STATE OF MISS., *County of Warren:*

Sworn to and subscribed before me, this 25th. day of Feb'y 1904.

J. H. SHORT,
[SEAL.] *Notary Public.*

Answers of D. H. Herman.

Answers to interrogatories and cross-interrogatories propounded to D. H. Herman, in the suit of Vicksburg Water Works Co. *vs.* Mayor and Aldermen City of Vicksburg, taken before J. H. Short, notary public, on the 12th day of February, 1904.

Ans. Int. 1. D. H. Herman, age 61, Vicksburg, Mississippi; proprietor of the garden restaurant.

Ans. Int. 2. The Vicksburg water works plant was constructed sometime about 1887, 1888, or 1889.

Ans. 3. From the Mississippi river, and has done so ever since it was constructed.

Ans. Int. 4. I have been drinking filtered Mississippi water, furnished by the Vicksburg Water Supply Company.

257 Ans. Int. 5. For domestic purposes altogether, but never for manufacturing purposes; never had any occasion to use it for manufacturing purposes.

Ans. Int. 6. At my home I have used the water from the water works company for bathing purposes, and at my restaurant have used nothing but Mississippi River water, at the bar, on the table, and for general purposes.

Ans. Int. 7. I do. I know it to be good water for drinking purposes, which I have been using it for, and that is all; for cooking and drinking purposes.

Ans. Int. 8. For drinking purposes it is first class; have had no experience in manufacturing purposes.

Ans. Int. 9. I do not know.

Ans. Int. 10. Well, all I can say is this; I would prefer the Mississippi River water as I am getting it now, better than any other water that I know of. I would sooner drink it than any other water that I can get.

Answers of D. H. Herman to Cross-Interrogatories Propounded by Defendant.

Ans. X Int. 1. I do not know anything about that.

Ans. X Int. 2. I believe so. From what I have seen, since this channel has been cut, the Yazoo comes right into the Mississippi.

Ans. X Int. 3. I could not say; I never tested that water particularly. Don't know that I ever drank it.

Ans. X Int. 4. I don't know anything about that.

Ans. X Int. 5. I don't know whether it passes over such low country, or not, and I do not know that the water of the Yazoo river is considered bad for drinking purposes. I do not know whether it produces malarial diseases.

Ans. X Int. 6. I know that the Washington Street sewer empties into the Yazoo River canal at the foot of Main street. I don't know anything about how far that is from the intake pipe.

Ans. X Int. 7. I don't know how far up it runs. I know it empties into Main street, but I don't know how far up Washington street it is. I judge about fifteen or twenty feet in diameter. I don't recollect exactly when this sewer was built, and I don't recollect how large it is.

Ans. X Int. 8. I don't know what quantity of sewerage passes through the sewer. There is a great many houses on Washington street that have their water closets connected with the Washington Street sewer, but I don't know how many. I believe that the public buildings named in the question all have their water closets empty into the Washington Street sewer.

Ans. X Int. 9. The sewer was constructed long before, I don't know what year it was constructed in, but I know it was long before. It was constructed before the big yellow fever.

Ans. X Int. 10. At the time that the water works was con-
258 structed the Yazoo river emptied into the Mississippi river at a point opposite Young's point, about six miles north of the city; the Yazoo river now empties into the Mississippi river through the new Yazoo River canal, at the lower landing. I do not know how far the mouth is from the intake pipe.

Ans. X Int. 11. I do not know anything about that.

Ans. X Int. 12. As far as I know the general direction of the surface drainage from the city of Vicksburg into the Yazoo River canal, and Mississippi river is westward, but I do not know how far it is from the intake pipe.

Ans. X Int. 13. I have no knowledge of the extent of the contamination of the water of the Yazoo river by the sewerage from the city of Vicksburg and the surface drainage, and I do not know anything about the wholesomeness, and the fitness for use, of the water from the said Yazoo river.

Ans. X Int. 14. I do not know whether the water used by the water works company comes from the Yazoo river or not.

Ans. X Int. 15. I know that the water was good and wholesome,

although it was muddy, as far as my judgment went. I have never heard anybody kick about the water.

Ans. X Int. 16. The water is all right, and good and clear in all respects.

Ans. X Int. 17. I could not swear that they have. I believe there was a little break down once. I don't recollect but one break-down, and it was short, and during this time, the water furnished was muddy. I don't know the length of time it lasted.

Ans. X Int. 18. I don't know anything about that.

Ans. X Int. 19. I don't know whether the water was contaminated with chemicals, or not, it appeared to me to be muddy, and I did not observe any odor, or scent. I do not think there was more mud than it had before they had the filter in use.

Ans. X Int. 20. I never made any tests or examinations, not before or since.

Ans. X Int. 21. I don't know anything about that.

Ans. X Int. 22. I am not a chemist, and never made any chemical examinations. The water appears to be clear, and I have no fault to find with it. I think it is good; I never analyzed it, or never had it analyzed, but I think it is equally good or better than it would be if taken directly from the river, as far as my judgment goes.

Ans. X Int. 23. I have no reasons for not answering this question, but simply do not know whether it contains any sewerage or not.

Ans. X Int. 24. I have no reasons for not answering this question; I simply don't know. I have not heard of any contamination, or observed any.

Ans. X Int. 25. I have considered it good and wholesome at all times, if not, I would not have used it, but made other arrangements.

259 Ans. X Int. 26. I never had fault with it, because I had a private filter of my own. I do not know a thing about using it for manufacturing purposes, but I always considered it all right.

Ans. X Int. 27. As stated previously, I have never had any occasion to use this water for manufacturing purposes, but have used it continuously in my restaurant and bar, and have never found any fault with it. I have no knowledge of any tests made by anyone else.

Ans. X Int. 28. I considered it good for all domestic purposes, I do not consider that it fell short of any of its requirements. I never made any chemical analysis of it, though I am unable to say that it does not contain any sewerage. I always considered it good.

Ans. X Int. 29. I do not know anything about the treatment of water.

Ans. X Int. 30. I do not know anything about the operations of the water works company.

Ans. X Int. 31. Well, I do not know. I should think that it would be because if there is any matter in it whatever, it is more than apt to settle.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. Of course, I have been using the water ever since

the water works company has been operating here, and I have always filtered my water, have a private filter at my home, always found the water all right from the very fact that it was filtered, and good and wholesome, but I never used any chemicals.

Ans. X Int. 34. I know of no such place. It is a matter in which I have made no inquiries.

Ans. X Int. 35. I have no knowledge of any of the matters or things mentioned in this interrogatory.

DAVID H. HERMAN.

STATE OF MISS., *County of Warren:*

Sworn to and subscribed before me, this 12th day of Feb'y, 1904.

[SEAL.] J. H. SHORT,
Notary Public.

UNITED STATES OF AMERICA,
Western Division of the Southern District of Mississippi:

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG.

In pursuance of the foregoing and attached agreement, I, J. H. Short, a notary public in and for the city of Vicksburg in the county of Warren and State of Mississippi, caused to come before me
260 the aforesaid witnesses: Jacob Voenkle, J. M. A. Brennan, E. S. Butts, D. H. Herman, J. B. Smith, F. Streuby and Charles Linstrom, who being by me duly sworn each for him- deposed and answered the questions and cross questions as hereinbefore set out; the witness named, J. J. Powers was and is ill and not able to testify; the witness named T. L. Flanagan failed and neglected to testify although requested so to do, or was prevented from so doing on account of his business.

Given under my hand and official seal this 29th day of February, 1904.

[SEAL.] J. H. SHORT.
Notary Public in and for the City of Vicksburg, Warren County, Mississippi.

The above and foregoing has the following indorsement thereon, to-wit: No. 41. Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Depositions of J. B. Smith, F. Streuby, J. M. A. Brennan, E. S. Butts, D. H. Herman, Chas. Linstrom, J. Voenkle. Filed Feb'y 29, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

Deposition of M. O. Crumpler.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

No. —.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
MAYOR AND ADERMEN OF THE CITY OF VICKSBURG.

It is understood that the answers of M. O. Crumpler to the appended interrogatories when made under oath before some officer authorized by the State of Mississippi to administer oaths may be read in evidence on the hearing of the above entitled cause, subject only to objections for irrelevancy and incompetency; notice and commission and all matters of form are hereby expressly waived; the certificate of the officer taking the depositions shall be conclusive evidence of his authority to administer oaths, and formal captions and certificates of such officer *is* expressly waived and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscribed before me, this — day of ——"
and signed by the officer with dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Complainant.

—— ——,
Attorneys for Defendant.

261 *Interrogatories to be Propounded to M. O. Crumpler.*

Int. 1. State your name, age, residence and occupation.

Int. 2. If you state your occupation to be the manager of the water works plant in Vicksburg, state when that plant was constructed, if you know?

Int. 3. State, if you know, what was the occupation of S. R. Bullock & Co. and what was the character and kind of contracts they required if any, in the work they undertook and their custom in that connection.

Int. 4. If you answer the preceding question affirmatively, state, if you know, whether they used the same contract adopted by the defendant in this case and if you have an original or duplicate of the ordinance and contract between defendant and S. R. Bullock & Co. showing additions and erasures as it was finally adopted and approved by defendant, please file it with your deposition as Exhibit "A" hereto.

Int. 5. State whether, or not you are familiar with the plans and specifications of said contract, and if you say yes, please state if said plant was constructed in accordance with said specifications and plans or not? What action was taken by the defendant in reference

to the plant so constructed, and file herewith certified copies of any proceedings of the city council relating to said work so constructed and mark the same as Exhibit "B" to this deposition?

Int. 6. State whether or not there was any complaint of any kind or character by word or resolution from defendant that the water company did in any manner forfeit or violate or was not carrying out said contract prior to the latter part of the summer of 1900.

Int. 7. State how your company acquired, if it did acquire, any right, title or interest in said water works plant: Answer this question fully, and file herewith any muniments or evidence of title to said water works plant under which your company claims said water works plant, as Exhibit "C."

Int. 8. If your company claims any right to any contract for hydrant rental, and any privileges conferred by the defendant upon S. R. Bullock & Co., please state fully how your company acquired said rights, and file herewith any evidence of writing thereof if your company possesses any, and make the same Exhibit "D" to this deposition?

Int. 9. If you know, state, exactly what was done by the Vicksburg Water Supply Company under the rights, titles and privileges and contracts acquired by deed from S. R. Bullock & Co. which the said S. R. Bullock & Co. acquired from the said defendant, so far as any obligation imposed by said contracts is concerned?

Int. 10. State, if you know, where the water came from which was supplied the city by said Vicksburg Water Supply Co., particularly the character, quality and quantity of said water, and the length of time said water was furnished?

262 Int. 11. State, if you know, what mechanical devices the Vicksburg Water Supply Company possessed for testing the pressure of water in the mains of said plant, and what was indicated by said devices so far as pressure is concerned.

Int. 12. State who represented your company in making the investigation of the plant here, and the negotiations for the purchase of the water works plant?

Int. 13. State if you had any connection with said investigation and negotiations, exactly what you did and exactly what you discovered?

Int. 14. State how your company has been operated since your company acquired the same, under what contract, if any, with the city your company was operating, and what your company did under said contract particularly with reference to the obligations imposed by said contract upon your company. Answer this question fully?

Int. 15. State when was the first time you had any intimation that the defendant was in any manner dissatisfied with the operation of the waterworks plant here?

Int. 16. State whether the city had made default at any time in the payment of its hydrant rentals, particularly before the latter part of the summer of 1900?

Int. 17. State whether any notice was ever served by the defendant by resolution or otherwise, in writing upon the said Vicksburg

Water Supply Company, complaining in any manner of its performance of its obligations, under said contract for the supply of water?

Int. 18. State in detail the origin of the controversy between your company, and the city, its progress and all matters connected therewith, filing with your answer copies of any communications or notices served upon you, and copies of any replies thereto, made by you to said defendant?

Int. 19. How does the proceedings which you have related affect your company and its commercial standing and credit?

Int. 20. State in detail, what action, if any, was taken by the defendant under the act of the legislature of the State of Mississippi of March 9th, 1900?

Int. 21. How will the act of the legislature of the State of Mississippi of March 9th, 1900, if made operative and effective by the defendant effect the commercial standing and credit and life of your company?

Int. 22. Has the city of Vicksburg a general sewerage system in operation?

Int. 23. What kind of a sewerage system has the city of Vicksburg and by whom was it constructed?

Int. 24. What effect, if any, did the discharge from the said system have upon the water supply of the city of Vicksburg. Answer this question in full.

Int. 25. If you know, how does the health of the people of the city of Vicksburg compare with the health of the other people
263 of the other cities in Mississippi and Louisiana of the same size and even of smaller size?

Int. 26. Has the water works company made any recent improvements on its plant? If so, what is the character and extent of said improvements, and the cost thereof, and what induced them to make the said improvements?

Int. 27. State how and when your company obtained the water-works plant, and the improvements your company made to said plant, if any, since it acquired same, and for what purpose?

Int. 28. Since the initiation of this controversy between the city and your company, what efforts, if any, have been made by the city to discharge its obligations under its contract with your company?

Int. 29. If you state that it violated its obligations under its contract, state the extent of such violation, and its effect upon the commercial standing of your company?

Int. 30. Does the defendant take water from the Vicksburg Water Works Company, and if so, for what purpose and what is the duration of the contract and what does the city pay for the same?

Int. 31. Please state whether or not the water works company has complied with its contracts as to the drinking fountains as stipulated in said contract?

Int. 32. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of

this, your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer?

M. O. Crumpler's Deposition.

Answer to interrogatory 1. My name is M. O. Crumpler. Over twenty-one years of age, I reside in Vicksburg, Mississippi. I am manager of the Vicksburg Water Works Company.

Ans. Int. 2. The plant was constructed in 1887 and 1888.

Ans. Int. 3. S. R. Bullock & Company's connection was the construction of the water works plants. They has a printed form or contract in the form of an ordinance which they required to be passed by city councils where they built waterworks plants.

Ans. Int. 4. Yes, they used the same form of contract as was adopted by defendant in this case. I have an original of the contract between the defendant and S. R. Bullock & Company, showing additions and erasures as it was finally adopted, and I file it with my deposition as Exhibit "A."

Ans. Int. 5. Yes, I am familiar with the plans and specifications of the contract; the plant was constructed in accordance with the specifications and plans. The defendant inspected and accepted the plant as having been constructed in accordance with the plans and specifications, and I file a certified copy of the proceedings of
264 the city council relating to said acceptance and mark it as Exhibit "B" to my deposition.

Ans. Int. 6. There was no complaint of any kind or character by resolution or word from the defendant that the water company had in any manner forfeited or violated, or was not fully carrying out said contract prior to the latter part of the summer of 1900.

Ans. Int. 7. Our company acquired a title to said water works plant and franchise by purchase under a foreclosure sale of the first mortgage bonds, together with a quit claim deed from the Vicksburg Water Supply Company, and I attach copies of the same to my deposition and mark them Exhibits "C" and "D" respectively.

Ans. Int. 8. I have answered this question in my answer to interrogatory No. 7.

Ans. Int. 9. The Vicksburg Water Supply Company constructed the water works plant under the rights, titles and privileges acquired from S. R. Bullock & Company, and S. R. Bullock & Company had acquired these rights, titles and privileges from defendant.

M. O. Crumpler's Deposition No. 2.

Ans. Int. 10. The water which was supplied to the city by the Vicksburg Water Supply Company came from the Mississippi river. The water was pumped from the Mississippi river to large reservoirs or settling basins, where it was allowed to settle for about forty-eight hours; then it was pumped to the city for use; in character and quality it was a good wholesome water for private and domestic purposes, and good for manufacturing purposes, and there was an

adequate supply for the needs of the city, and its inhabitants. The length of time said water was furnished was about eleven or twelve years, when our company purchased the plant, and the same kind and character of water has been furnished by complainant since it purchased the plant up to May 1st, 1903, at which time our company installed a filter plant.

Ans. Int. 11. The Vicksburg Water Supply Company, as well as the Vicksburg Water Works Company, used a mechanical device known as a recording gauge to test the pressure of the water they were carrying; this gauge indicates the water pressure on a chart, showing automatically exactly what the pressure was every hour and minute during the day and night. One chart represents a period of twenty-four hours, then a new chart is put in. I file said charts as Exhibit "E" to my deposition.

Ans. Int. 12. Mr. C. Delafield, a hydraulic engineer of New York city.

Ans. Int. 13. Yes, I was with Mr. Delafield in the investigations and negotiations; we investigated the property for about one week, and we found the physical condition of the property very good, and after inquiry, we ascertained that the city and its inhabitants
265 were pleased with the operation of the plant, and the kind of water furnished.

Ans. Int. 14. Since our company acquired the plant, it has been operated under the contract with the city granted to S. R. Bullock & Company, and our company has, in every particular, carried out all of the obligations and conditions imposed by said contract.

Ans. Int. 15. The first time our company had any intimation that the defendant was in any manner dissatisfied with the operation of the plant was a short time after the city had held an election to bond the city to buy or build and own waterworks of its own, some time in the latter part of the summer of 1900.

Ans. Int. 16. The city had never made default in the payment of city hydrant rental, nor had ever questioned the payment in any manner until after it had fully decided it wanted water works of its own, which was a short time after said bond election in the latter part of 1900.

Ans. Int. 17. No notice of any kind, by resolution in writing or otherwise was ever served upon the Vicksburg Water Supply Company of the non-performance of its obligations under the contract, either as to the supply or as to the quality of the water nor had any ever been served upon our company to this effect. The only notice ever served on us was a resolution passed November 7th, 1900, simply denying that the city had any contract with our company, which I make Exhibit "F" to my deposition; but no notice of complaint has ever been served on us to the effect that our company was not complying with the contract, or any part of it, or that we had violated the contract in any particular.

Ans. Int. 18. The origin of the controversy between the defendant and our company was solely for the reason that the city wanted a water works plant of its own. After the city had held an election which was carried, to own its own waterworks, it resorted to all kinds

of methods to harass, annoy and to break up our company financially and otherwise, by passing a resolution stating that the city had no contract with our company, and serving notice upon it to that effect (see Exhibit "F" hereto), and by refusing to pay the city hydrant rental. They also put in a recording gauge at the Washington fire engine house, and kept the water partly cut off, so that the full pressure could not get to the gauge, so a low record could be made against us, that the contract might be annulled in that way. When we found that the water was kept party cut off, we gave them notice in writing that the valve must be kept open wide enough to admit of full pressure, or that the gauge should be put in charge of the local underwriters of fire insurance, who were disinterested parties. I make a copy of said notice Exhibit "G" to my deposition. The fire chief, Mr. Marks, who was appointed by the city council, and who was directly under the council's control, would not, or did not, open the fire hydrants full so as to get the full pressure when there was fire, and would then claim that the water company did
266 not have full pressure required, and in this way made the citizens feel unsafe, and caused an unjust prejudice against our company. This performance was continued until all the fire insurance companies in the United States who were doing business in the city, had their representatives come here and investigate the conditions, and after the investigation they appeared before the city council and stated that if Mr. Marks was not removed as fire chief their companies would not insure property in the city of Vicksburg any longer, and finally Mr. Marks was removed. Mr. R. M. Kelly, one of the city councilmen, stated to Mr. Hudson and myself, that the city wanted to get the plant for one hundred and fifty thousand dollars, and that the city council intended to do everything in their power to harass and annoy our company, so as to make us sell at that price, and that we might expect the council to do everything they could to break the contract.

Alderman Smith told me that the city would never buy the plant under the option of the contract because they would not pay as much for it as they would have to pay that way.

Alderman Campbell stated in open session of the city council that he was opposed to building a sewerage system in the city, for the reason that it would enhance the value of the water works plant.

There was a municipal election held in the city on December 6th, 1900, and the mayor and a majority of the aldermen went before the people on the platform pledging themselves that if elected they were in favor of bringing suit to cancel the contract with the water works company. They stated over their own signature in the newspapers, published in the city, that all proper efforts should be exerted to have the present contract with the water company tested in the court, and if warranted by law, vacated and annulled. They made the people believe that the contract ought to be cancelled, and they have created an unjust prejudice against the water company on that account. Within a few weeks after the election, suit was filed in the chancery court of Warren county, Mississippi, to cancel the contract.

Ans. Int. 19. The actions of the city council, as just related, and bringing suit to cancel our contract, has affected our commercial standing and credit to a very great extent, and the unjust prejudice brought about by said political and other actions with the citizens of Vicksburg has been very damaging to us. The attempt to annul our contract by resolution together with bringing suit to annul it, and the general fight that has been made upon us, has been the means of our having to buy material to operate the plant in several instances, C. O. D., or bill of lading attached. It has been the cause of our company having to employ additional counsel in the city of St. Louis, costing us several thousands of dollars. It has been the means of causing an unjust prejudice against us in the minds of our patrons, making it much harder to collect what they owe, and in many instances causing us to lose their accounts altogether. It is impossible to tell how far reaching and how damaging such actions are to a company like ours, or to any business con-
267 cern, but a short time since we had a transaction with a concern in Memphis, Tennessee. They received notice from Dun's agency that if they were interested in the Vicksburg Water Works Company to call at their office; they were then informed that a New York concern had been financing our concern, but had withdrawn and would not do so any longer. It is true that it was a false report, but the damage was just as great. No human mind *had* possibly ferret out and tell how far reaching such actions are upon a company like ours, for it is beyond conception, and especially so with the rapid transit of news in this progressive age.

Ans. Int. 20. The defendant held an election to issue and sell bonds of the city to build or buy a water works plant of its own under the act of March 9th, 1900.

Ans. Int. 21. If the act of March 9th, 1900 is made operative and effective by defendant, it will commercially ruin our company.

Ans. Int. 22. The city of Vicksburg has not the general sewerage system in operation.

Ans. Int. 23 and 24. These interrogatories are answered fully by me in my deposition heretofore taken in this case on this point.

Ans. Int. 25. I do not know how the health of this place compares with other cities in this State and Louisiana.

Ans. Int. 26. The water company has made recent improvements on its plant. One of the greatest improvements is the construction of a complete filter plant to filter all of the water delivered to the city, costing about thirty thousand dollars. The reason we had to put in the filter plant was on account of the sewerage discharges polluting the water a short distance above our intake pipe, as stated in my previous deposition, on the sewerage outlet of *from* the city, which the city has recently put into operation; and the further reason that the United States Government has recently changed the course of the Yazoo river, causing it to flow in front of the city of Vicksburg, Mississippi, thereby taking all of the city garbage dump and sewerage discharge directly in front of our intake pipes, which is fully set out in my former deposition on the sewerage question.

Ans. Int. 27. Our company bought the plant under the foreclosure sale of the first mortgage bonds in August, 1900.

Ans. Int. 28. None, it has paid the city hydrant rental only under the mandate of the court, and has continually tried to break the contract instead of carrying out its obligations.

Ans. Int. 29. This question has been answered in interrogatory 19.

Ans. Int. 30. Yes, the defendant takes water from our water company for the purpose of domestic, fire protection, flushing gutters, public schools, all public buildings of the city and eight public drinking fountains for man and beast, and pays seven thousand seven hundred dollars for the public purposes per annum. The duration of the contract is for thirty years from November 19th, 1886.

Ans. Int. 31. Yes, the water company has complied with
268 its contract as to the eight public drinking fountains as stipulated in the contract, and in all other respects.

Ans. Int. 32. Our company has to use a great deal more coagulants to filter and purify the water than it would if the sewerage discharge was not let out at a point above our pumping station, thereby making it cost a great deal more to operate the filter plant. A great many of our patrons have told me they felt squeamish about drinking and using the water on account of the sewerage outlet above the point where we get our water, notwithstanding we were now filtering it, stating that they did not think we could make it a clean water, and it keeps other parties from becoming patrons of our water company. It is a very great damage directly and indirectly to our company for the city to permit and allow the storm sewer along Washington street to be connected up with water closets in the most thickly settled part of the city, which has its outlet above our intake pipe. The city's allowing said water closet connections to said storm sewer had all been done since the water plant was built, and its pumping station located. No water closets of any kind were connected to the storm sewer when the water works plant was built, and it has only been in the past few years that water closets have been allowed to be connected with said storm sewer. Our company knew nothing of said water closet connections to said storm sewer until after we had purchased the plant. It is getting worse every day by more closets being connected whenever any one desires to do so, although against our protest. The city puts all its garbage and dump, consisting of dead animals, and other matter from the city, above our intake pipe, and if these conditions are continued it will financially ruin our company by keeping citizens from using water, they knowing these conditions exist. The hydrant rentals and rates named in the contract between the city and the water works company, and regulations as per Exhibit "H," a part of this deposition, are reasonable, and I have examined the city records to ascertain if there were any minutes, resolutions or ordinances of any kind, complaining of or notifying the water company or any of its predecessors, that the contract between the city and S. R. Bullock & Company

was not being complied with in any particular, prior to November 7th, 1900, and I find there is none; and the city clerk also tells me that there is nothing prior to that time.

M. O. CRUMPLER.

Sworn to and subscribed before me this 29th day of February 1904.

J. H. SHORT,
Notary Public.

[SEAL.]

269 *Cross-interrogatories and Answers of M. O. Crumpler.*

X Int. 1. Mr. Crumpler, can you state the time, or about the time when you first became connected with the water works plant in this city?

Ans. On August 15th, 1900. That was when we took possession. The purchase was made on August 8th, 1900.

X Int. 2. What company then owned and was operating the plant?

Ans. Prior to that time, the Vicksburg Water Supply Company.

X Int. 3. Then your company purchased the water system here from the Vicksburg Water Supply Company on August 8th, 1900, and entered into possession of the same on August 15th, 1900?

Ans. We purchased the first mortgage bonds, together with the accrued interest thereon prior to that time, but the foreclosure sale was not made until August 8th, 1900, and we took possession on the 15th.

X Int. 4. From whom did you purchase the first mortgage bonds with the accrued interest.

Ans. From the First National Bank of New York City.

X Int. 5. From whom did you purchase the plant, under foreclosure sale?

Ans. From the Farmers' Loan and Trust Company, trustee in the mortgage.

X Int. 6. Have you a copy of any memorandum or bill of sale issued to you by the First National Bank of New York for the bonds and accrued interest upon the same?

Ans. Yes, sir, I have.

X Int. 7. I will ask you to attach the original or a copy of the same, and make proffer of the original on the trial of this cause, to your deposition?

Ans. The purchase of the bonds and accrued interest was a private matter entirely, and I therefore decline to produce the original or a copy.

X Int. 8. You state that you bought the plant under a foreclosure sale? Have you a deed of conveyance or bill of sale?

Ans. I have already made the deed an exhibit to my original deposition in this cause.

X Int. 9. The sale was made August 8th, 1900?

Ans. Yes, sir.

X Int. 10. And the Vicksburg Water Supply Company turned the property over to you August 15, 1900?

Ans. Yes, sir.

X Int. 11. Do you know whether the Vicksburg Water Supply Company had any other property or not?

Ans. Not that I know of?

X Int. 12. Do you know whether the Vicksburg Water Supply Co. carried on or transacted any other business than supplying
270 water to the mayor and aldermen of the city of Vicksburg, and to the inhabitants of the said city, or not?

Ans. No other that I know of.

X Int. 13. Did you obtain from the Vicksburg Water Supply Company direct any other bill of sale for any other property than that described in the foreclosure conveyance or sale?

Ans. Not that I know of. We took a quit claim deed from them on October 8th, I think, which is Exhibit "—" to my deposition, which shows what conveyances there were in there. In other words, it speaks for itself.

X Int. 14. The quit claim deed, then, was the only purchase made by you directly from the Vicksburg Water Supply Company?

Ans. Yes, sir.

X Int. 15. I notice that you have said "we" all along. I will ask you to explain what you mean in the answer?

Ans. I mean the complainant, The Vicksburg Water Works Company.

X Int. 16. That was a corporation, existing under the laws of the State of Mississippi, was it not?

Ans. Yes, sir.

X Int. 17. Has that company continued since August 15th, 1900, to own and operate a waterworks system in this city?

Ans. Yes, sir, up to a few months ago, when a transfer was made to the City Waterworks and Light Company.

X Int. 18. The City Waterworks and Light Company then, is a corporation and now owns and is now operating the waterworks plant and system in this city?

Ans. It is.

X Int. 19. Is the City Waterworks and Light Company a corporation organized under the laws of the State of Mississippi, or under the laws of some other State, and if under the laws of some other State, what State?

Ans. It is under the laws of South Dakota.

X Int. 20. What connection, if any, has the Vicksburg Water Works Company now with the property and management of the water works system now engaged in supplying water to the defendant and inhabitants of the city of Vicksburg?

Ans. None.

X Int. 21. It has parted with all of its interest then in the plant that is now being used to supply water to the city of Vicksburg and its inhabitants.

Ans. Yes, sir.

X Int. 22. It is not now the owner of the franchise or the contract

originally made with S. R. Bullock & Company to supply water to the city of Vicksburg and its inhabitants?

Ans. It is not.

X Int. 23. Mr. Crumpler, are you familiar with the plant or machinery and appliances now being used to supply water to the defendant City of Vicksburg and its inhabitants?

271 Ans. I am.

X Int. 24. Now, in reference to the mains used in supplying the water, I will ask you how many miles of mains are now in use by the present company in supplying water to the city of Vicksburg?

Ans. That is a private matter. I will answer how many there were at the time of the original construction. When the plant was originally constructed, there was 12400 feet of sixteen inch pipe; 4220 feet of eight inch pipe, and 59930 feet of six inch pipe.

X Int. 25. Was there any four inch pipe then being used by the said company or not?

Ans. I think there has been a little four inch pipe put in since.

X Int. 26. Mr. Crumpler, you know, but decline to say, how many feet of sixteen inch pipe are now in use by the City Light and Water Company?

Ans. I do.

X Int. 27. I understand that you know, but decline to state, how many feet of eight inch pipe are now in use by the said City Water Works and Light Company?

Ans. Yes sir.

X Int. 28. You know, and decline to state, how many feet of six inch pipe and how many feet of four inch pipe, and how many feet of ten inch pipe and how many feet of twelve inch pipe is now in use by the City Water Works and Light Company.

Ans. Yes, sir.

X Int. 29. I will ask you to describe minutely the machinery and pumping apparatus at the pumping station of the City Water Works and Light Company now in use. Give the number and capacity of the boilers, the engines, now in use and the number and capacity of the pumps now in use, and whether or not the same are duplicate or single.

Ans. There are two duplex compound condensing engine pumps, manufactured by the Lean Steam Pump Company of Holyoke, Massachusetts installed in the engine house of the pumping station. The size of these two pumps are fourteen inches by twenty-six inches by fourteen by eighteen inches. They are so constructed that they can be operated separately or together, and the capacity of each is about two and a quarter millions of gallons every twenty-four hours, and each has a condenser connected to it. The battery of boilers consists of four, three of them being the size of sixty inches in diameter, sixteen feet long. The other one is seventy-two inches in diameter by twenty-feet long. The total horse-power of the said boilers is about four hundred.

X Int. 30. How long has that plant been up to that standard if you know?

Ans. There are two boilers installed when the plant was first built. In 1896 or '7 another boiler of the same size was put in. In 1903 the largest boiler mentioned was put in.

272 X Int. 31. I will ask you how long the pumps have been up to their present standard?

Ans. The pumps are just as they were when they were originally installed in the pumping station.

X Int. 32. There has never been any change made, then, in the pumps?

Ans. I will explain that the pumps are so made that smaller plungers and bushing can be installed in the water end of the pump. And there was a time when the plungers and bushings in the pumps was operated with twelve inch plungers and bushing instead of fourteen inch. But even under those conditions the capacity of the pumps was equal to the two million gallons per day.

X Int. 33. I will ask you, Mr. Crumpler, what is the source of supply of the water used by the company. Where do you get your water from?

Ans. From the Mississippi river.

X Int. 34. Has that been the case ever since the contract was entered into with Samuel R. Bullock & Co.?

Ans. Yes, sir.

X Int. 35. There has been no change, thence, since the contract was first made, as to the source of supply of the water?

Ans. The pumping station is exactly where it was when it was originally built.

X Int. 36. And you have gotten your water from the same place all the time?

Ans. Yes, sir.

X Int. 37. How far is your intake pipe below and south of the southern limits of the city of Vicksburg?

Ans. I think something like three fourths of one mile.

X Int. 38. And is it not due west of, or opposite the village of Speed's Addition?

Ans. I am under the impression that we are now in the city of Speed's Addition. I don't know exactly where the limits are.

X Int. 39. When your water works system was first constructed did the Mississippi river flow by the city of Vicksburg or not, or do you know?

Ans. I do not know. I suppose it was where it is now.

X Int. 40. There was a time, however, was there not, when the Mississippi river flowed right by the city of Vicksburg?

Ans. I understand so, from talk, not that I know of myself.

X Int. 41. But for some years prior to the purchase of the water works plant by the Vicksburg Water Works Company, was it not a fact that the Mississippi river did not flow by the city of Vicksburg, but that there was an old bed, or channel of the said river extending up in front of the city of Vicksburg?

Ans. I understand these conditions to be true, not that I know personally of those matters.

X Int. 42. Since the purchase of the said plant by the water works

company, is it not a fact that the United States Government has changed the outlet of the Yazoo river so as to cause it to flow
273 in front of the city of Vicksburg along the old channel of the Mississippi river, and to empty into the Mississippi river a short distance north of the intake pipe of your plant?

Ans. Yes, sir, this is a fact.

X Int. 43. About what time was that change made?

Ans. In the latter part of 1902, or the first of 1903. That was when the actual opening took place. Construction was in progress for a year prior to that.

X Int. 44. Since that time, is it not a fact that the Yazoo river has been pouring into the Mississippi river at a point on the same side of the Mississippi river that your intake pipe is located, and within half a mile above it?

Ans. Yes, sir, that is a fact except as to the distance, which is not far from right.

X Int. 45. Do you know whether or not your intake pipe takes in any of the water from the Yazoo river?

Ans. It would be impossible for me to tell whether they do or not. Certain parties claim that there is an eddy there and takes the water up the Mississippi river to a point known as West pass, and there it goes out into the Mississippi river, and whether or not we get any of the Yazoo River water, I do not know; but I take it for granted that the natural results would be that we would get some.

X Int. 46. Have you made any test or examination in regard to eddies and what course the Yazoo water takes after emptying into the Mississippi river.

Ans. I have not.

X Int. 47. Have you had any such test or examination made?

Ans. I have not.

X Int. 48. Of your own knowledge, then, you know nothing of the eddy or eddies of which you have been speaking?

Ans. Nothing except hearsay.

X Int. 49. Did you make any test of the water in your basins—any chemical test or examination of such water or have it done prior to the time the Yazoo river was so changed so as to empty at its present outlet?

Ans. No, sir, we did not.

X Int. 50. You have had such examination made since then, have you not?

Ans. Yes, sir.

X Int. 51. I will ask you who made such examinations for you?

Ans. Prof. Metz, of New Orleans.

X Int. 52. Where did you get the samples of water you gave him for analysis?

Ans. Prof. Metz came here himself and got samples of water.

X Int. 52. Did he analyze the samples of water before the same was in any way treated with chemicals or otherwise, and before the same was passed through your filter?

Ans. Yes, Prof. Metz collected his samples on April 23, 1903, and

our filter plant was then being constructed and was not com-
274 pleted until May 1st, 1903, and none of the samples which Prof. Metz collected had in any case been treated with chemicals or had passed through the filter plant.

X Int. 53. Have you the results of his examination?

Ans. Yes, sir.

X Int. 54. Do you know whether that result of examination was correct or not?

Ans. Only from what he states.

X Int. 55. I will ask you to append his report of the water taken and examined by him on said date to your deposition as an exhibit.

Ans. That is filed with Prof. Metz' deposition in this case.

X Int. 56. Mr. Crumpler, I will ask you to give a minute description of your apparatus, machinery, ways means, and appliances for obtaining and lifting water from the Mississippi river, and transmitting the same to your settling basins.

Ans. We consider that as a private matter as to how we get the water from the river into the settling basins, for the reason that there was nothing of the kind mentioned in the contract between defendant and S. R. Bullock & Company, or their assigns; but, notwithstanding that I will give a detailed description as to how we get the water from the Mississippi river to the settling basins. We have two Worthington duplex pumps that are located on the bank of the river, which are connected with steam from the boiler rooms, and which has a discharge pipe from the pumps into the settling basins. We are also at present installing in addition to this, a centrifugal pump and engine down in a shaft of forty feet depth in the engine house with the proper connections out from the bottom of the shaft to the river. The capacity of this pump is three millions of gallons per day. We intend to keep the two pumps on the river bank already referred to as an auxiliary, and by this method we have two distinct systems of getting water from the river into the settling basins. They can be operated together or separately, and the two pumps on the river bank can be operated together or separately.

X Int. 57. How many lines of pipe have you at present from your settling basins to the Mississippi river, for the purpose of obtaining a supply of water?

Ans. We have three section pipes and one discharge pipe.

X Int. 58. By one discharge pipe you mean that you have one pipe from the engine which you are now maintaining on the bank of the river to the settling basins. Is that correct?

Ans. The pumps on the river have separate discharge pipes up to the top of the bank of the river, where they are connected by a "Y" shaped connection to one pipe, which is a larger pipe.

X Int. 59. What is the size of the discharge pipe from the point where the two pipes come together to the settling basins?

Ans. Twelve inches.

X Int. 60. What is the size of the pipes from the fork to the pumps?

275 Ans. One is twelve inches, one is ten inches, and one is eight inches.

X Int. 61. What is the size of the pipe from the fork in the discharge pipe to the pumps now in use—the two that are on the river?

Ans. One is eight inches, and the other is ten inches. The one in the well is twelve inches.

X Int. 62. You are not using the one in the well as yet?

Ans. It has not been started up yet.

X Int. 63. You never have used the one in the well up to now?

Ans. We are now installing it.

X Int. 64. It has never been used up to the present time?

Ans. Not yet.

X Int. 65. What is the capacity of the two pumps you have on the river bank now in use, in gallons per twenty-four hours?

Ans. The capacity of either one of the pumps is about two million gallons each. I will explain. When I say "about"—the pumps can be run at a speed varying from twenty to one hundred strokes per minute, and of course the faster the pump is run, the more water is delivered. We only run the pumps fast enough to supply the demand as the occasion arises. One is operated at a time, except in cases where we have accident, then we operate them together.

X Int. 66. Will you tell us the make and size of these pumps?

Ans. They are manufactured by Henry R. Worthington, of Brooklyn, New York, who is recognized as one of the highest standard of pump manufacturers. The sizes are as follows: One is nine inches by thirteen, and one-half inches by ten inches; the other one is ten inches by ten and one fourth inches by ten inches.

X Int. 67. I will ask you what you mean by the first dimension.

Ans. That means the steam cylinder is nine inches in diameter.

X Int. 68. What do you mean by thirteen and one half inches?

Ans. That is the size in diameter of the plunger of the water end.

X Int. 69. And the ten inches is the length of the stroke?

Ans. Yes, sir.

X Int. 70. Now, then, the dimensions given for the two engines are taken in the same way?

Ans. Yes, sir.

X Int. 71. That is, the first dimension is the diameter of the cylinder in the steam end of the pump, the second dimension is the diameter of the plunger in the water end of the pump, and the third is the length of the stroke?

Ans. Yes, sir.

X Int. 72. I understood you to say that these pumps are capable of one hundred strokes per minute?

Ans. They can be run up to that rate, but we never have run them at that.

X Int. 73. I will ask you at what rate of speed is it practicable to run them?

Ans. Eighty-five or ninety.

276 X Int. 74. Have you calculated the capacity of the pumps at ninety strokes per minute?

Ans. I have not.

X Int. 75. So when you say that the capacity of each one is ap-

proximately two million gallons, that is an estimation on your part, and not the result of an actual calculation.

Ans. We arrive at that more definitely from knowing how much water we pump to the city, and from what we know how the river pumps were running. I will state this: That if you desire, I will make the calculation as to how many gallons it would furnish running at ninety strokes per minute.

X Int. 76. Is it not susceptible of exact calculation?

Ans. It is.

X Int. 77. From the data which you have given above?

Ans. It is, except as to slippage. I mean by "slippage" that water that may waste or pass back between the plunger and the bushing.

X Int. 78. That, however, would go to diminish the amount of water?

Ans. It would.

X Int. 79. If you have any books or tables showing the working capacity of the description of the pumps given above, will you furnish the stenographer the capacity of these pumps, running at ninety strokes per minute.

Ans. I will. After examining the books and tables giving the capacity of different size pumps running at ninety strokes per minute *and* find that a duplex pump 9 x 13½ x 10, will deliver 3,208,320 gallons of water in twenty four hours; and a duplex pump size 10 x 10¼ x 10 will deliver 1,872,000.

X Int. 80. Now, Mr. Crumpler, is it necessary as the river rises and falls to shift these pumps on the bank of the river?

Ans. It is.

X Int. 81. About what change in the river requires the pumps to be shifted.

Ans. That depends very largely in this way. The river may be falling and get so low that we must move the pumps down nearer the water; and the indications at that time with the water in the tributaries above us may indicate that the river will go still lower for several weeks. In that case we set the pump very close to the water's edge, thinking the river will go lower; but sudden rains may come and change this calculation by raising the river within a short time, causing us then to remove the pumps back upon the bank. In other words, we are at the mercy of the rise and fall and adjust the pumps according as it does so.

X Int. 82. These pumps as you use them are both suction and force pumps, are they not?

Ans. Yes, sir.

X Int. 83. You lift the water up to the pumps by suction do you not?

277 Ans. That is commonly, the term used of getting water up to the pump. The facts are that the pump simply excludes the air between the pump and the water, and then the water of itself comes up to the pump by atmospheric pressure.

X Int. 84. How high is it practicable to lift the water in this way?

Ans. Practically about twenty-four feet. Theoretically, they claim about thirty-three feet.

X Int. 85. Then for all practical purposes you are compelled to shift your pumps on a rise or fall in the river of about twenty four feet?

Ans. That would not be so every time. I will explain in this way. The river at present might be twenty four feet below the pump, and a rise of twenty four feet might come, and the pump remain where it is, the river receding at this point, going back again twenty four feet, and it might do this, rising and falling in between several times before having to remove the pump at all.

X Int. 86. You cannot operate these pumps under water?

Ans. Yes sir.

X Int. 87. At what depth under the water?

Ans. They can be operated most any depth under the water; but it is not safe to do this, and we never try it.

X Int. 88. As a matter of fact, you have never operated one under the water at all?

Ans. We have.

X Int. 89. How often.

Ans. I don't remember that we have ever operated it but once or twice wholly under the water.

X Int. 90. And for how long a period at each time?

Ans. Only for a short time, for a week or so.

X Int. 91. Does the river ever get high enough so you don't have to use these pumps?

Ans. Yes sir.

X Int. 92. At what height on the gauge does the river have to reach before you can dispense with the pump?

Ans. I think it is about forty-six or seven feet, I don't know.

X Int. 93. Whenever the river falls below forty-six feet you have to use the pump?

Ans. Yes sir.

X Int. 94. Then when these pumps are placed in use for the river at forty-six feet and it falls to twenty two feet or below, it is necessary to shift the pumps, is it not?

Ans. Yes sir.

X Int. 95. If you place the pumps at twenty-two feet and the river falls two feet below zero, it would be necessary to shift them again, would it not?

Ans. Yes sir.

X Int. 96. Again, if these pumps are placed in use when the river is a height of twenty-two feet, and the water in it rises to twenty-four feet, would you have to shift the pumps or not.

278 Ans. It would not be absolutely necessary, but we do it as a matter of precaution.

X Int. 97. Have you any record of how often you have shifted these pumps since you have been in charge of the water works plant here?

Ans. No sir.

X Int. 98. Have you any data or memoranda, or have you any

recollection, of how often they have been shifted since you owned the plant?

Ans. I have not.

X Int. 99. Can you give us an estimate of how often you have shifted them within that time which will be approximately correct?

Ans. I don't know that I can, the time is two or three years back.

X Int. 100. Can you give me an estimate of how many shifts you have made within the last twelve months?

Ans. I think some three or four, I don't remember.

X Int. 101. Mr. Crumpler, you stated in your direct examination, that you kept a gauge reading of the pressure of the water in your standpipe at all times. Give me some information in regard to this gauge reading in this: How low does the water have to get in your stand pipe for your gauge to read zero? In other words, what does a zero reading on this gauge indicate?

Ans. It indicates that the water at that point where the gauge is — not then above the gauge.

X Int. 102. Where is the gauge placed from which these readings are taken.

Ans. In our office.

X Int. 103. The gauge is in your office?

Ans. Yes, and there is one in the Washington engine house, owned by the city.

X Int. 104. Now, if I understand you correctly, whenever the water gets below the level of the gauge in your office, it stands at zero?

Ans. That's right.

X Int. 105. Do you know how much water that required in your standpipe, or whether any or not?

Ans. I think we are on a level, or below the standpipe. I don't think there would be any in the standpipe when it shows zero in our office.

X Int. 106. Supposing, then, that there was absolutely no water in the waterworks system now being operated by you, the gauge reading in your office before any water goes into the standpipe would be zero?

Ans. Yes sir.

X Int. 107. Now, then, what would the gauge read in your office when the stand pipe was full and overflowing, if you know?

Ans. Eighty pounds.

X Int. 108. Then this gauge that you have runs between a range of zero and eighty pounds.

279 Ans. Yes, sir, except when we are pumping direct into the pipe system and not into the standpipe. In that case it is an easy matter to run the gauge up to two or three hundred pounds. This method is sometimes operated when we are low in pressure with water in the city. This is done by closing the large valve at the foot or bottom of the stand pipe in the sixteen inch main, which enters the standpipe; and this is done in case of fire, at that time to get good fire service.

X Int. 109. This pressure cannot be exerted, however, upon it until the mains themselves are filled with water?

Ans. No, sir.

X Int. 110. Now, Mr. Crumpler, can you tell from your gauge reading, how many times this plant has been without pressure, and particularly without water for domestic consumption and fire protection, since you have been in charge of the plant?

—. ——.

X Int. 111. The charts themselves will show each day's and hour's pressure that has been maintained by your company, which we have filed to this deposition.

X Int. 112. Let me ask you this question. For all practical purposes we have been without any adequate supply of water in this city either for fire, private consumption or for fire protection as often as the charts show that the pressure fell below zero on the gauge?

Ans. That is so, except as to the lower part of the city along on Washington street and Levee street and that section. The higher parts of the city would be out.

X Int. 113. You state that on Washington and higher points below that there might be water for both domestic consumption and fire protection when the gauge reading was below zero. Will you state whether or not that would be limited absolutely to the amount of water that was then in the mains at such times as the water fell below zero in your office?

Ans. No, that is not true, because we might be pumping at the same time.

X Int. 114. Have you any record in your office or elsewhere to show when you were pumping?

Ans. There is no record as to the hours or time when the pump is run.

X Int. 115. According then to what you have said, the gauge reading indicates absolutely a sufficient or insufficient supply of water at points having a higher elevation than your office, but at points having a lower elevation than your office it does not?

Ans. That is true, but the lower elevations always have it before the higher elevation has it.

X Int. 116. Then, if I understand you correctly, that as often as the gauge shows zero or below, the points at a higher elevation than your office are without a supply of water.

Ans. Yes, sir.

280 X Int. 117. The points below your office at such times may have a supply of water?

Ans. Yes, sir.

X Int. 118. But that the supply of water at such points is dependent upon two conditions, one is the amount of water in the mains, and the other is as to whether or not you are pumping?

Ans. Yes, sir.

X Int. 119. Do you have no way of showing from records in your office or from your memory when the supply of water in the mains was being increased by the action of your pumps?

Ans. Yes, sir, that is, when the water was below the pressure in the gauge.

X Int. 120. Mr. Crumpler, can you tell me what hydrant now in use by the city is located, on the highest point of elevation?

Ans. Near the City hospital.

X Int. 121. Now what will the gauge read in your office when there is sufficient pressure to flow out of the said hydrant?

Ans. It would show about thirty pounds.

X Int. 122. Are there any other fire hydrants at approximately *at* the same elevation?

Ans. No, that is the highest.

X Int. 123. Do you know how many fire hydrants there are in the city of Vicksburg that are at elevations above the gauge in your office?

Ans. I do know—very few.

X Int. 124. Do you know what is the elevation above the sea level of the gauge in your office?

Ans. No, sir.

X Int. 125. Do you know the elevation of the gauge in your office above your pumping station?

Ans. There is sixty pounds difference between our pumping station and the gauge in our office.

X Int. 126. That is sixty pounds per square inch of surface?

Ans. That is about one hundred and thirty or thirty-five feet difference.

X Int. 127. The pressure, then, is approximately one pound for two feet?

Ans. That is what we count it in rough numbers. As a matter of fact it is not that much—about forty-four hundredths of a pound for each foot of elevation.

X Int. 128. That is the unvarying rule, is it not, and has no references whatever to lower or higher elevations?

Ans. Unvarying.

X Int. 129. The fact that the water is practically incompressible makes it unvarying?

Ans. Yes, sir.

X Int. 130. Now then, the pressure at a point thirty feet above to the gauge in your office would be a little less than fifteen
281 pounds to the square inch when the gauge reading in your office would be thirty pounds to the square inch?

Ans. Yes.

X Int. 131. Now you say you do not know how many hydrants there are above the elevation of the gauge in your office?

Ans. I do not.

X Int. 132. You do not know approximately?

Ans. No, I cannot tell that.

X Int. 133. State this, Mr. Crumpler. Is it not a fact that nearly all of the resident part of the city of Vicksburg is at a higher elevation than the gauge in your office?

Ans. No, sir. Cherry street, except at a point near the court house, would be a little bit lower than the gauge in our office, and that is

about as high a resident street as there is except in the northeast portion of the city on Farmer street.

X Int. 134. The gauge then, in your office, you would say, is about an average height of the residence part of the city of Vicksburg?

Ans. Yes, sir.

X Int. 135. Mr. Crumpler, what has become of the corporation heretofore existing and known as the Vicksburg Water Works Company, have you surrendered your franchise?

Ans. We have not. It has simply sold out what property it had to the City Waterworks and Light Company.

X Int. 136. It has now no property of any kind whatever?

Ans. No, sir.

X Int. 137. What business is it now engaged in carrying out?

Ans. Nothing.

X Int. 138. How long since it has been engaged in carrying on business or owned any property?

Ans. First of December, 1903.

X Int. 139. What corporate act or acts, if any, has it done since the first of December, 1903?

Ans. I don't know of any except in winding up its business.

X Int. 140. If it has no property and is carrying on no business what further business has it to wind up?

Ans. It is winding up the accounts, etc., that belonged to the company.

X Int. 141. It does, then, as a matter of fact, still own some accounts and claims against people?

Ans. Yes, sir.

X Int. 142. Then when you said it had no property, you meant that it had no tangible property—I meant that it had no water works, or anything of that kind.

Ans. Yes, sir.

X Int. 143. But it does have claims, rights, choses in action, and things of that kind unwound up?

Ans. Yes, sir.

X Int. 144. When was its last election of officers held?

Ans. I think it was in January, 1903.

282 X Int. 145. For what period were the officers elected at that time?

Ans. Annually.

X Int. 146. They were elected for one year at that time?

Ans. Yes, sir.

X Int. 147. You are the manager of the new company, the City Water Works and Light Company, the same as you were the manager of the old company, the Vicksburg Waterworks Company, are you not?

Ans. Yes, sir.

X Int. 148. Mr. Crumpler, since the filter has been installed down there, has all the water that has been supplied to the consumers either by the water works company or by the new company, been passed through the filter?

Ans. Yes, sir, except for about four or five days, or a week.

X Int. 149. At what time was the four or five days or a week that you speak of?

Ans. During the month of December, 1903.

X Int. 150. About what time during that month?

Ans. Along the latter part of it.

X Int. 151. Have you any record to show exactly what time in the month it was?

Ans. No, sir.

X Int. 152. Are you sure that it was not about the fourteenth up to the twentieth?

Ans. It might have been.

X Int. 153. As a matter of fact, do you not know that was the time?

Ans. I do not, Mr. Bryson.

X Int. 154. Now, Mr. Crumpler, I want to ask you about the working of this filter plant down there. Is it not a fact that when you pump water into your settling basins now that you also put chemicals into it so to produce co-agulation?

Ans. Yes, sir.

X Int. 155. What chemicals do you put into the water and what quantity?

Ans. Sulphate of iron and lime.

X Int. 156. Can you tell me what effect they produce upon the water?

Ans. They co-agulate the smaller matters that are suspended in the water, and about seventy or seventy-five per cent. of the suspended matter is thereby settled in the basins before the water goes into the sand filter beds, and the sand then catches the rest of the said suspended matter.

X Int. 157. Then the iron and lime you put into the water together with about seventy to seventy-five per cent. of the solid or suspended matter in the water is dropped in the bottom of the settling basins?

Ans. Yes, sir.

X Int. 158. How often do you clean out those basins?

283 Ans. About once a year.

X Int. 159. When were these basins last cleaned by you?

Ans. Last summer. They are always cleaned out in the summer, when the water is warm.

X Int. 160. If there has been, then, something like six months up to the 1st of January, 1904, of sediment deposited there?

Ans. Yes, sir.

X Int. 161. Now, Mr. Crumpler, during the period that you were not using your filter, where did you pump your water from?

Ans. The water was pumped into the settling basins, and then run through the troughs of the filter plant, taking the water from the top of the basins instead of from the bottoms.

X Int. 162. In that way was there any of the former sediment in the basins taken up and pumped into the mains?

Ans. No, sir.

X Int. 163. The water then you pumped into the mains for use of the consumers was about as the water which you took out of the stream at your intake pipe?

Ans. Yes, sir, and a little purer, because it is settled some of itself.

X Int. 164. Whatever water, then, that was taken from your mains, in the city of Vicksburg, during the period of time you were not using the filter, was a fair sample of water from the original source of supply?

Ans. Yes, sir, except five or six hours one day, when my engineer allowed the water to get so low that it took some of the former sediment in the basins.

X Int. 165. Then for five or six hours during that time, some time in December, between the 10th and the 20th you did pump into your mains some of the former sediment?

Ans. Yes, sir.

X Int. 166. During that five or six hours you pumped into the mains for the use of the consumers water that contained not only the natural impurities that were in the original source of supply, but also certain quantities of the iron and lime which you had put into the water and of the sediment of the water before then used?

Ans. Yes, sir.

X Int. 167. Tell me, if at any other time you ever pumped sediment into the mains?

Ans. No, sir.

X Int. 168. Not even before you installed your filter plant?

Ans. No. If so, there was very little that would be taken out, say three or four feet near the pipe that was used to let the water from one basin to another to get it to the basin where the house pump takes it and delivers it to the city. But generally speaking, it amounted to nothing.

X Int. 169. And if there has been any such sediment pumped into the mains at any other time, you cannot give the time can you?

284 Ans. I don't know that any other has been pumped into the mains.

X Int. 170. Then, Mr. Crumpler, if any water has been taken from the mains since you have been manager of this plant, with but the single exception of December 10th to 20th, 1903, it has been a fair sample has it not, of the water taken from the original source of supply by you?

Ans. Yes, except as to the dates which you mentioned, that I don't know whether they were of those dates or not—no other that I know of.

X Int. 171. Have you a record of the gauge readings at the pump house?

Ans. No, sir.

X Int. 172. You keep no records?

Ans. No, sir, we have a gauge there but it is not what is known as a recording gauge—there is no record of the pressure.

X Int. 173. Did you ever examine the gauge at the Washington house?

Ans. Yes, sir.

X Int. 174. How many times did you examine that gauge, Mr Crumpler?

Ans. Yes, sir, that is, I went there to see what the gauge was registering.

X Int. 175. Did you make any further or additional examination other than just to see what it was reading?

Ans. I opened the valve below the gauge that controls the supply of water, from the mains to the gauge, and to see if it was fully open letting the full pressure to the gauge, and I found several times that it was not.

X Int. 176. How often did you open the valve to see whether it was letting on full pressure or not?

Ans. Two or three times.

X Int. 177. At any of those times did you change it so as to let the full pressure on?

Ans. I left the valve wide open so that the water could get full pressure on the gauge.

X Int. 178. You afterwards came back and found it partly cut off, if I understand you?

Ans. I found it in that condition.

X Int. 179. Did you again turn it on?

Ans. Yes, sir.

X Int. 180. Now will you give me an estimate as to how often you found the valve turned so as to cut off part of the pressure, and how often you turned it on full?

Ans. Two or three times. We gave the city notice of the condition and asked that the gauge be put in some disinterested parties' hands, or to leave the valve open so that the needle of the valve would vibrate; and when this was done we would know that the valve was wide enough open to get full pressure.

285 X Int. 181. Do I understand you to say that unless the full pressure of the water is turned on through the valve, that the needle of the gauge is in any way located, or will in any way refuse to indicate the pressure on the gauge?

Ans. Yes, sir, if the valve is closed tightly, the needle will not indicate the correct pressure in the mains.

X Int. 182. But will the needle be in any way fastened or cramped so that it cannot move?

Ans. The needle itself will not be cramped, but the pressure will not get to it and push it up. I will say it is a good deal like steam or gas.

X Int. 183. The needle, then, indicates, the pressure on the gauge itself, whether the valve is open or not; but if the valve is partly closed, the needle will not indicate the true pressure?

Ans. That is true.

X Int. 184. Who was the fire chief at that time?

Ans. Henry Marks.

X Int. 185. Do I understand you to say in answer to your direct interrogatory No. 18 that when a fire would occur in the city of Vicksburg Mr. Marks the then fire chief, of the city of Vicksburg,

would order his men not to open the valves in the fire hydrants to their full extent?

Ans. No, sir. I did not say that the chief, Mr. Marks, would order his men not to open the valves. Whether it was wilful or not is beyond my knowledge.

X Int. 186. Did Mr. Marks himself turn these valves or not?

Ans. I cannot tell you that.

X Int. 187. But you mean to say that during the time that Mr. Marks was fire chief, of the city of Vicksburg, the fire department either refused or neglected to turn on the water to its full pressure in the hydrants?

Ans. That is true in several instances.

X Int. 188. Will you name an instance?

Ans. At the time of the fire at Cherry and Jackson streets, we had sixty-four or five pounds pressure in our office, and the fire chief claimed that the pressure was insufficient. During the fire at Mulligan's on Mulberry street, the pressure in our office was only sixty pounds, and the fire chief said he had all the pressure there he needed. At the Lee Richardson fire, in his residence on Cherry street, the hydrant was not open until a long time after they were fighting the fire, when our young man, Mr. Tomkins in the office, appeared on the ground, and saw the hydrant fully opened by one of the firemen after he had asked him if it was open, and when the hydrant was fully opened they got all the pressure they needed.

X Int. 189. Do you remember any other fires in which you contend the hydrants were not fully opened so as to turn on the full pressure?

Ans. There was one down on Levee street near the Advance
286 gin that there was a question raised about the pressure, and afterwards the assistant chief, Schulen, stated that the hydrant was not fully open at first, and that after it was opened they had all the pressure they wanted. This case was before the city council, and referred to a committee to investigate, and the committee reported back that they found that the hydrant was not fully open at first, but that when it was fully opened they had all the supply of water they wanted.

X Int. 190. That was very near the Advance gin?

Ans. Yes, sir.

X Int. 191. That was during the time Marks was fire chief?

Ans. After he was out.

X Int. 192. Do you remember of any other time?

Ans. I don't recall any other particular instance.

X Int. 193. Then, so far as you know, or have reason to believe the hydrants during all other fires except those above mentioned, have been fully open?

Ans. So far as I know, yes, sir.

X Int. 194. Whose building was destroyed in the fire at the corner of Cherry and Jackson streets, if you remember?

Ans. I don't know. There was a Jew on the corner, and I think Geo. Shaw has one or two.

X Int. 195. Those buildings with the exception of George Shaw's have not been replaced?

Ans. I don't think they have.

X Int. 196. Did the fire occur at night?

Ans. Yes, sir.

X Int. 197. Were you up there yourself?

Ans. No, sir.

X Int. 198. You have no personal knowledge then of what pressure was on that night, except from the gauge reading in your office?

Ans. That's all. That was sixty-four or five pounds, much greater than is called for in our contract.

X Int. 188. Do you know what is the elevation of the hydrant from which the fire company was getting water that night, and if so whether the hydrants so used were at a greater elevation than the gauge in your office.

Ans. They would be very near level with the gauge in our office. Our office is in a two story building on the second floor, and the gauge is five or six feet above that and would throw it very nearly level with those points.

X Int. 200. How about Mulligan's fire? Were the hydrants used there in putting out that fire above or below the gauge in your office?

Ans. Below.

X Int. 201. How much below—how many feet?

Ans. I should judge they were twenty or thirty feet below.

287 —. Where were the hydrants located used in the Mulligan fire—on what street?

Ans. I think one was used from Washington street, corner of Crawford another from Crawford, and another from Mulberry.

X Int. 202. The one on Washington street would be approximately twenty feet below the gauge in your office?

Ans. Fifteen or twenty.

X Int. 203. The one on Mulberry street would be nearly fifty feet lower than the one on Washington?

Ans. No, not that much.

X Int. 204. How much?

Ans. I should think twenty five feet.

X Int. 204. Then you would say that the hydrant on Mulberry street was at least forty feet below the gauge in your office?

Ans. I should think it would be.

X Int. 206. Now, as a matter of fact, is it sixty feet below the gauge in your office?

Ans. I cannot tell you without having it surveyed.

X Int. 207. But if it was only forty feet below the gauge in your office, the pressure in the hydrants on Mulberry street would be approximately twenty pounds greater per square inch than at the gauge in your office?

Ans. Yes, sir.

X Int. 208. Were you present during the Mulligan fire?

Ans. Yes, sir.

X Int. 209. Did you examine the hydrants to see if they were turned on full force there?

Ans. No, sir.

X Int. 210. Then the only time that you contend that the hydrants were not fully open was the fire near the Advance gin, near the corner of Cherry and Jackson, and the Lee Richardson fire?

Ans. Yes, sir, so far as I know.

X Int. 211. Were you present at the Lee Richardson fire, and examine the hydrants to see if it was fully open?

Ans. I was not personally present, but the young man, Tomkins, in our office, was.

X Int. 212. Tomkins is still here in town, is he not?

Ans. Yes, sir.

X Int. 213. Were you present at the fire near the Advance gin?

Ans. I was not.

X Int. 214. So you cannot state of your own knowledge, then, whether the hydrants used during that fire were fully open or not?

Ans. I have already stated very fully that the matter was before the city council and referred to a committee and the committee reported back to the council after a thorough investigation, that the hydrant was not fully open for some time after they had been fighting the fire, and then they had all the pressure they wanted after it was fully opened.

X Int. 215. I notice you say, in discussing this matter in
288 your direct examination, that the fire chief, Mr. Marks, who was appointed by the city council, and was directly under their control, would not or did not open the fire hydrants full so as to give the full pressure when there was a fire, and would then claim that the water company did not have full pressure required, and in this way made the citizens feel unsafe and caused an unjust prejudice against our company." Do I understand you to charge in the foregoing language that the water was not turned on in full force in order to cause or produce a prejudice against your company?

Ans. That is my opinion.

X Int. 215. You make that, then, as a charge against the fire department of the city of Vicksburg?

Ans. No, sir. I did not make it as a charge. I simply stated the facts and gave it as my opinion.

X Int. 216. I notice in your direct examination that you state that "R. M. Kelly, one of the city councilmen, stated to Mr. Hudson and myself, that the city wanted to get the plant for one hundred and fifty thousand dollars, and that the city council intended to do everything in their power to harass and annoy our company, so as to make us sell at that price, and that we might expect the council to do everything they could to break the contract." Will you kindly state when and where you and Mr. Hudson had such conversation with Mr. Kelley?

Ans. The conversation occurred in Mr. Hudson's office, on the —— day of ——.

X Int. 217. Who was present at that conversation besides you, Mr. Hudson, and Mr. Kelley?

Ans. There was no one present but us three; but Mr. Kelley made a very similar remark in Mr. Vollor's office, the city attorney at a certain meeting of a committee appointed by the city council, when they offered to pay us a less price for the city hydrant rental than the contract called for. Mr. Vollor remarked at the time: "You do not mean to say to force them to do these things," Kelley said: "Well, to do everything we can to make them sell for one hundred and fifty thousand dollars.

X Int. 218. Who was present at that meeting?

Ans. Mr. Hudson, myself, Mr. Vollor, and the committee appointed. I think D. A. Campbell, alderman, was on the committee, but I am not sure as to who composed the committee.

X Int. 219. Do I understand you to charge that any of the other members of the board of mayor and aldermen have threatened your company in like manner?

Ans. They have not done so in so many words, but in actions they have?

X Int. 220. Where was Alderman Smith when he told you that the city would never buy the plant under the option in the contract because they would not pay as much for it as they would have to pay in that way?

289 Ans. Right at the foot of the steps in front of his office.

X Int. 221. At what time as near as you can state?

Ans. On the 12th day of June, 1901.

X Int. 222. Do you consider it undue prejudice against your company or unfair that the city should be opposed to building a sewerage system for the reason that it would enhance the value of the water works plant?

Ans. I do.

X Int. 223. Do you consider that the fact that certain candidates for office should, as alleged in your direct examination, pledge themselves that if elected they would be in favor of bringing suit to cancel the contract with the water works company, necessarily unfair or evincing undue prejudice against your company.

Ans. I certainly do.

X Int. 224. Might it not, Mr. Crumpler, be an evidence of righteous indignation against the treatment of the public by the water works company then existing?

Ans. No, sir. Because this was only a few months after our company had taken possession of the plant, and no complaint of any kind had ever been brought to our notice or even talked of. It was too early in the game, Mr. Bryson, there was no complaint up to that time.

X Int. 225. Do you consider that because one puts up with wrong and mal-treatment for an indefinite period of time, that he is thereby estopped forever to complain of the same?

Ans. I think the courts have held to that effect, and perhaps in this case; but I wish to state that there has never been any maltreatment, or abuse, in the operation of this waterworks plant, but it has fully carried out in every particular its part of the contract.

X Int. 226. I understand then that you vouch for Mr. McFarland

and all of the preceding managers of this company, that they have in every particular furnished and supplied to the mayor and aldermen of the city of Vicksburg and to its inhabitants water in accordance with the terms and provisions of the contract made with Samuel R. Bullock & Company.

Ans. Yes, sir. I don't think there is a question about it.

X Int. 227. Do you know of any action taken by the city under a law passed March 9th, 1900, having in view the construction of a new system of waterworks to be owned by the city, and used in supplying water to the inhabitants of the city of Vicksburg.

Ans. Yes, sir. I know that they took action under said legislative act, and held an election on June 3d, 1900, to ascertain whether the city should issue bonds and sell them to the amount of one hundred and fifty thousand dollars to buy the present waterworks or to build one of its own.

X Int. 228. But I asked the question, did you know of anything the city has done looking towards the building of a water works, not to buy the present water works?

290 Ans. The action that I have just related is the only action I know of that the city council have taken.

X Int. 229. And that action merely gives the right to sell bonds, either for the purpose of buying or building.

Ans. That is the way I understand it.

X Int. 230. The city, then, has taken no further action in reference to said act, so far as you know.

Ans. Except to give us notice that the contract between us and the city was at an end, so as to relieve themselves of liability under that contract.

X Int. 231. Has the city done anything to indicate that it had elected or decided whether it would buy or build?

Ans. Not that I know of.

X Int. 232. So, far, then, as you know, the city has done nothing which indicates that it had elected to build waterworks under said act of the legislature in preference to buying the present system of water works?

Ans. Not that I know of.

X Int. 233. All the acts done, so far you know, would have been done in the same way in case the city had decided to buy and not to build.

Ans. No sir. If the city wanted to buy, the act should have been to that effect, and the election to that effect specifically, if they had wanted to buy out water works.

X Int. 234. That might have "bulled" the market, might it not?

Ans. It might, and the other way might have "beared" the market.

X Int. 235. Then the fact that the city had not, up to this day, done any act or passed any resolution showing that it had made an election as to whether it would buy or build under the said law, so far as you know, may have been for the purpose of buying the water works as cheap as possible?

Ans. Yes, sir.

X Int. 236. As a matter of fact, don't you think all the acts done by the city might be explained in that way—that the city desired to purchase at the lowest possible price?

Ans. That might have been their intention, but I think if it was it was a very unjust one to repudiate a contract to get another man's property cheaper than its value.

X Int. 237. I notice in your direct examination you say the filter plant lately installed by the waterworks company cost about thirty thousand dollars. Is it not a fact that it cost considerably under thirty thousand dollars.

Ans. I think it will cost more before we have finally completed what will be necessary to do get the best service.

X Int. 238. But it has not cost that much to date, has it?

Ans. Right in that neighborhood.

X Int. 239. I notice, Mr. Crumpler, you say in answer to
291 direct interrogatory No. 32, that "our company has to use a good deal more coagulants to filter and purify water than it would if the sewer discharge was not let out at a point above our pumping station, thereby making it cost a great deal more to operate the filter plant." Do I understand from this that part of the sewerage matter of the city of Vicksburg is pumped into your settling basins?

Ans. I don't think there is a question but what that is true, and too true to be good.

X Int. 240. You consider, then, that the water which you are now taking from the Mississippi river and that you have been taking, from the Mississippi river for the last year or more contains more or less sewerage matter from the city of Vicksburg.

Ans. Yes, sir, but the water can be made pure by using coagulants and proper filtering.

Since answering the foregoing and before being sworn to and subscribed, our company had completed the installation of the large three million gallon pumps, before mentioned, which large pumps are now used to pump water from the river to the reservoir. This gives us two complete and distinct systems now to convey the water from the river to the large reservoir.

M. O. CRUMPLER.

Sworn to and subscribed before me, this 29th day of February, A. D. 1904.

J. H. SHORT,
Notary Public.

[SEAL.]

EXHIBIT "B."

At a special meeting of the board of mayor and aldermen of the city of Vicksburg, held at the office of the Vicksburg Water Supply Company March 27th, 1889, after an inspection of the "works" by the board.

Resolved: That the system of water works of the Vicksburg Water Supply Company constructed in accordance with an ordi-

nance entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use and giving to said city of Vicksburg an option to purchase said works," approved November 19, 1886, be and the same is hereby accepted, *provided* that the said Vicksburg Water Supply Company shall furnish and erect at their own proper cost and expense the six drinking fountains, and the one public fountain mentioned in section four (4) of said ordinance. The said six drinking fountains to be furnished and erected within sixty days from this date, and the public fountain to be furnished and erected at such time when the same is located by the mayor and aldermen of said city, and,

292 Resolved: That the rental for said hydrants shall commence on and date from April 1st, 1889.

(Signed) J. F. BAUM,
Acting Mayor.

At a regular meeting of the mayor and aldermen of Vicksburg, held at city hall,

June 17th, 1889.

Resolved: That the water works company be notified that the drinking fountains put up by said company are inadequate, as they do not furnish water required, and the amount sufficient for the purposes intended.

R. F. BECK, *Mayor.*

CITY HALL, *August* 5, 1889.

Resolved: That the matter of having rectified the insufficient supply of water as furnished by the public drinking fountains be referred to a special committee consisting of Aldermen Walsh, Crayton and O'Herrin.

R. F. BECK, *Mayor.*

At a regular meeting of mayor and aldermen at city hall,

October 7, 1889.

Resolved: That the account of the Vicksburg Water Supply Company ending July 1st, 1889, amounting to $1312.50, be, and is hereby allowed conditioned, that said water supply company change the present drinking fountains for ones that were suitable and sufficient in all respects.

R. F. BECK, *Mayor.*

At a regular meeting of mayor and aldermen at city hall,

October 21, 1889.

The special committee to whom had been committed the matter of the public drinking fountains reported that the matter had been

referred to Mr. McFarland, supt. of the Vicksburg Water Supply Company, who would make the necessary changes in said fountains. On motion the report was received.

R. F. BECK, *Mayor.*

At a regular meeting of the mayor and aldermen at city hall,

Jan. 20, 1890.

The water committee reported on communication of Mr. McFarland in regard to the fountains for the city, as follows: That the new fountains are to be the same as the public fountains now at the capitol grounds at Jackson, Mississippi. On motion the report was received and agreed to.

R. F. BECK, *Mayor.*

293 At an adjourned meeting of the mayor and aldermen at city hall,

April 16, 1890.

Mr. McFarland, on the part of the water works company, made a proposition in regard to street fountains, and upon motion was rejected and he was notified that original contract must be complied with.

At a regular meeting of the mayor and aldermen at city hall,

April 21, 1890.

A resolution was passed in regard to the water works public fountains. On motion the same was referred to city attorney to put it into a contract form.

R. F. BECK, *Mayor.*

At a regular meeting of the mayor and aldermen at city hall,

May 19, 1890.

An ordinance entitled An ordinance in relation to public fountains was offered and read, and on motion it was read by its title the second and third time and passed.

R. F. BECK, *Mayor.*

At a regular meeting of the mayor and aldermen, at city hall,

June 2nd, 1890.

(Final passage of the preceding ordinance.)

An Ordinance Entitled An Ordinance in Regard to Public Fountains.

Whereas a controversy has existed between the mayor and aldermen of the city of Vicksburg, and the water supply company, as to the insufficiency of the six fountains for man and beast provided to

be erected by the said company by the provisions of section four (4), of an ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, and giving the said city of Vicksburg an option to purchase said works, approved the 19th day of November, 1886; and whereas, it has been agreed to settle said difference between said company, and said board of mayor and aldermen upon the following basis and terms, to-wit:

That the Vicksburg Water Supply — shall, in lieu of the six fountains which have been erected and the public fountain provided in said ordinance, shall erect eight fountains, seven of which shall
294 be of the pattern and make known as the Moores patent drinking fountain for man and horse, the oval basin being 3 ft. 11 in. 2 ft. 11½ in. deep, height to top of column 3 ft. 2 in. and base 3 ft. 4 in. by 1 ft. 6½ in., a plate and description whereof is hereunto annexed marked Exhibit "A," and one of which shall be a drinking fountain *and* the character and dimensions set forth and described in the catalogue of J. I. Motts iron works, as plate 22 K-No. 1; which shall be, height to top of ball 5 ft. 8 inches, diameter of basin 4 ft. 4 in., 14 in. deep and 1 ft. 9 in. square, a copy of the plate whereof is hereunto annexed and marked Exhibit "B."

That six of said fountains above described shall be erected by said company at the points now occupied by the six fountains heretofore erected, which latter shall be removed by said company, and the other two of said eight to be erected at such points as said board may designate, and that the said water supply company shall be relieved from erecting the public fountain mentioned in said ordinance, provided however, whenever in the future the city may at its own expense provide and erect a public fountain it shall be supplied with water free of cost by said company.

Now, therefore, be it ordained by the board of mayor and aldermen of the city of Vicksburg, That if the Vicksburg Water Supply Company shall, within sixty days from this date, erect eight fountains as hereinbefore described and at the places designated, and to be designated then the said company shall be deemed and held to have complied with the provisions of section four (4), of said ordinance, in so far as it was obligated to erect fountains for man and beast, and a public fountain, and that thereafter it be held acquitted and discharged of all liabilities in and about the erection of the fountains mentioned in said ordinance, provided that in the event the said mayor and aldermen may, at their own expense, erect in the future a public fountain then the same shall be supplied with water free of cost by said company.

Be it further ordained That this ordinance be in force from and after the date of its passage.

Ordained this 2d. day of June, 1890.

F. L. GUSCIO,
City Clerk.

App'v'd this 5th. day of June, 1890.

R. F. BECK, *Mayor.*

At a regular meeting of the mayor and aldermen at city hall,

July 21, 1890.

Resolved: That the public drinking fountain be placed in the center of Monroe street, between Grove street and Jackson street, and that the extra fountain be placed at the corner of South Madison and Mulberry streets.

R. F. BECK, *Mayor.*

295 I hereby certify that the above and foregoing is a true and correct copy as taken from the original records at the same appears on file in my office.

Given under my hand, and the seal of the said city, this 2, day of May, 1904.

H. J. TROWBRIDGE,
City Clerk.

(Exhibit "B.")

EXHIBIT C.

This indenture, made the ninth day of August, in the year one thousand, nine hundred, between the Farmers' Loan and Trust Company, as trustee, under the mortgage or deed of trust made to it by the Vicksburg Water Supply Company, and dated March first, one thousand eight hundred and eighty-seven, and the Vicksburg Water Supply Company by the Farmers' Loan and Trust Company, its attorney, duly authorized, constituted and appointed by the said mortgage or deed of trust, of March first, one thousand, eight hundred and eighty-seven together constituting the party of the first part hereto, and Vicksburg Water Works Company, party of the second part;

Whereas, in and by the mortgage or deed of trust made by the Vicksburg Water Supply Company, to the Farmers' Loan and Trust Company dated March first, one thousand eight hundred and eighty-seven, made to secure an issue of bonds of the said Vicksburg Water Supply Company aggregating two hundred and fifty thousand dollars of principal, it was among other things provided that should any default be made in the principal or interest of the said bonds according to their terms or the terms of the said mortgage or deed of trust, and should the same remain unpaid and in arrear for the space of six months, if the holders of at least a majority of the said bonds then owing and outstanding should notify the said The Vicksburg Water Supply Company, and the said The Farmers' Loan and Trust Company in writing, before the interest so in default should have been paid, that they, the said bondholders elected that the principal of all the bonds secured by said mortgage or deed of trust and then owing and outstanding should become and be due and payable then upon such election being made, and notice being given as aforesaid, the principal of all the said bonds should immediately become due and payable, although the period therein limited for the payment thereof should not then have expired;

Whereas, in and by said mortgage or deed of trust it was among other things provided that if default should be made in the payment of the principal or interest of the aforesaid bonds, according to their terms or the terms of the said mortgage or deed of trust, and should the same remain unpaid and in arrear for the space of six months, then it should be lawful for the said The Farmers' Loan and Trust Company, or its successors, on being indemnified as in said mortgage or deed of trust provided and upon the written re-
296 quest of a majority of the holders of the said bonds then owing and outstanding so to do, to sell and dispose of all the property and franchises of every kind and description by said mortgage or deed of trust conveyed, and all benefit and equity of redemption of the said The Vicksburg Water Supply Company and its successors and assigns, and all persons claiming under them, in and to the same, at public auction to the highest bidder, after a notice thereof to be published in one or more newspapers of general circulation printed in the city of Vicksburg, Mississippi, and in the city of New York, once in each week for twelve successive weeks, and on the day of the sale, and by such further and other notice or requirements as might be necessary under the laws of the State of Mississippi, the sale to be held in the said city of Vicksburg or in the city of New York, with power to the said The Farmers' Loan and Trust Company as such trustee to adjourn the same from time to time, at its discretion by advertising or announcing *at* the time and place of the proposed sale, and as the attorney for the said The Vicksburg Water Supply Company, or its successors, for that purpose by the said mortgage or deed of trust duly authorized, constituted and appointed to make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds in the law for the same in fee simple, which sale so to be made should forever be a perpetual bar, both in law and in equity against the said The Vicksburg Water Supply Company, its successors and assigns, and against all other persons claiming or to claim the said property, or any part thereof, by, from or under them, or any of them.

Whereas, default was made in the payment of the coupon interest which fell due on the said bonds, on the first day of September, one thousand eight hundred and eighty-nine, and also in the payment of the subsequent interest days since the date last mentioned; and

Whereas, on or about April twenty-seventh, in the year nineteen hundred, when all such defaulted interest, excepting the sum of four thousand dollars, remained unpaid and in arrear, and, excepting the interest which fell due on the first day of March, nineteen hundred, had remained unpaid and in arrear for the space of six months, the holders and owners of the entire issue of the said bonds, aggregating two hundred and fifty thousand dollars then owing and outstanding, in accordance with the provisions of said mortgage or deed of trust notified the said The Vicksburg Water Supply Company and the said The Farmers' Loan and Trust Company in writing that they the said bond holders elected that the principal of

all of the said bonds should become and be immediately due and payable, and

Whereas, on or about the twenty-eighth day of April, nineteen hundred, during the continuance of the said defaults as aforesaid, and in accordance with the provisions of the said mortgage or deed of trust, the said bondholders requested the said The Farmers' Loan and Trust Company to exercise the power of sale contained in the said mortgage or deed of trust, and hereinbefore set forth, and further requested that the said sale be held in the city of New
297 York, giving to the said The Farmers' Loan and Trust Company, proper indemnification against the costs and expenses likely to be incurred; and

Whereas, in pursuance of the said request and in accordance with the provisions of the said mortgage or deed of trust the Farmers' Loan and Trust Company, as trustee under the said mortgage gave the notice required by the said mortgage or deed of trust, that in pursuance of the said power of sale, it would as trustee under the said mortgage sell at public auction to the highest bidder at the Real Estate Exchange sales room, at 111 Broadway, in the borough of Manhattan, city of New York, and State of New York, on the eighth day of August, nineteen hundred, at twelve o'clock noon, of that day, by Adrain H. Muller & Sons, auctioneers, all the property and franchises of every kind and description conveyed by the said mortgage of March first, eighteen hundred and eighty-seven, and all benefit and equity of redemption of the Vicksburg Water Supply Company, and its successors and assigns, and all persons claiming under them, in and to the same, the said notice containing the description of the said property and franchises as set forth in the said mortgage, or deed of trust, and did publish the said notice in the Vicksburg Daily and Weekly Vicksburg Herald, a newspaper of general circulation printed in the city of Vicksburg, State of Mississippi, and in the Harlem Local Reporter, and Bronx Chronicle, a newspaper of general circulation printed in the city of New York, State of New York, once in each week, for twelve successive weeks, and on the day of the sale, as required by the said mortgage or deed of trust; and

Whereas, on the said eighth day of August, nineteen hundred, in pursuance of said notices, said The Farmers' Loan and Trust Company by said Adrain H. Muller & Sons, auctioneers, offered said property premises and franchises covered by and described in said mortgage or deed of trust, and the said notice of sale *and* hereinafter described, for sale at public auction to the highest bidder at the Real Estate Exchange sales room, at 111 Broadway, in the Borough of Manhattan, city of New York, and State of New York, at twelve o'clock noon, of that day, and did sell the same at such sale to M. O. Crumpler, for one hundred thousand dollars, that being the highest bid;

Whereas the said M. O. Crumpler duly assigned his said bid to the party hereto of the second part, and requested the Farmers'

Loan and Trust Company to execute and deliver to the said party of the second part this deed;

Now this indenture, witnesseth, that the said party of the first part to these presents, in order to carry into effect the sale so made as aforesaid, and also in consideration of the premises, and of the purchase price of the said property so bidden as aforesaid, being first duly paid in the manner and as provided by the said mortgage or deed of trust, the receipt whereof is hereby acknowledged, hath granted bargained, sold and conveyed, and by these presents doth grant, bargain sell and convey unto the said party of the
298 second part, its successors and assigns, forever, all the property and franchises of every kind and description conveyed by the said mortgage of March first, 1887, and all benefit and equity of redemption of the Vicksburg Water Supply Company, and its successors and assigns, and all persons claiming under them in and to the same, the said property and franchises being described in the said mortgage of March first, 1887, as follows (the words "water company," "it" and "its" in said description referring to the said Vicksburg Water Company.

All its real and personal property, goods, and chattels now owned or which may hereafter be acquired by it, including its lands, waterworks, buildings, pump houses, standpipes, reservoirs, machinery pipes, mains, hydrants, apparatus and equipment situated in the county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder, and remainders, tolls, rents, issues, income and profits accruing therefrom.

Also all and singular the corporate franchises, privileges, rights and liberties which the water company now hath and can exercise, or shall hereafter acquire and possess.

"And also all the estate, right, title, and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the water company, of, in and to the property above described, and each and every part and parcel thereof, with the appurtenances."

To have and to hold all and singular the premises, franchises, and property above mentioned and described, and hereby transferred and conveyed, or intended so to be, unto the said party of the second part, its successors and assigns, to their own proper benefit and behoof forever.

It is hereby expressly understood and agreed that no covenants are contained or implied, or intended to be contained or implied in this deed.

In witness whereof, the said The Farmers' Loan and Trust Company hath caused these presents to be signed in its corporate name, as trustee under the said mortgage by its president, and its corporate seal attested by its secretary affixed, and hath also caused these presents to be signed in the name of the Vicksburg Water Supply

Company, by itself, as attorney, by its president, the day and year first above written.

(Signed) THE FARMERS' LOAN AND TRUST COMPANY, *Trustee,*

[SEAL.] By E. S. MARSTON, *President.*

Attest, SAM SLOAN, JR., *Secretary.*

(Signed) THE VICKSBURG WATER SUPPLY COMPANY,
By THE FARMERS' LOAN AND TRUST COMPANY, *Attorney,*

[SEAL.] By E. S. MARSTON, *President.*

Attest, SAM SLOAN, JR., *Secretary.*

299 STATE OF NEW YORK, *County of New York, ss:*

Be it remembered, that on this 20th day of August, in the year one thousand, nine hundred, before me, the undersigned, George H. Corey, a commissioner resident in the city of New York, duly commissioned, and qualified by the executive authority and under the laws of the State of Mississippi, to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared Edwin S. Marston, president, and Samuel Sloan, Jr., secretary, of the within named The Farmers' Loan and Trust Company, who severally acknowledged that they signed the within and foregoing instrument as such president and secretary, sealed the same with the corporate seal of the said company, and delivered the same as the act and deed of the said company on the day and year therein mentioned; that the said Edwin S. Marston, president of the said Farmers' Loan and Trust Company, being by me duly sworn, did depose and say that he resides in the city of New York that the seal affixed to the foregoing instrument is the corporate seal of the said The Farmers' Loan and Trust Company, and was thereto affixed by authority of the said company, and that he as president together with Samuel Sloan, Jr., as secretary, subscribed their names thereto by like authority.

In witness whereof, I have hereunto set my hand, and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,

[SEAL.] *Commissioner for the State of Mississippi.*

Office No. 56 Wall street, New York city.

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record, together with the requisite revenue stamps duly cancelled on the 24th day of August, 1900, at 1.40 o'clock p. m. and duly recorded in Deed Book No. 92, pages 361, *et seq.*

Witness my hand and seal of the said court this 24th day of August, 1900.

[SEAL.] J. D. LAUGHLIN, *Clerk.*

(Endorsed:) The Farmers' Loan and Trust Company, trustee and the Vicksburg Water Supply Company, by the Farmers' Loan and Trust Company, attorney, to Vicksburg Water Works Company. Deed.

300 THE STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court, do hereby certify that the foregoing deed was filed for record this 24th day of August, 1900, at 1.40 o'clock p. m., and recorded in Book 92 p. 361, to p. —.

J. D. LAUGHLIN, *Clerk.*
J. L. HYLAND,
Deputy Clerk.

(Exhibit "C.")

EXHIBIT "D."

Whereas, on the 8th day of August, 1900, at the Real Estate exchange, No. 111 Broadway, New York city, State of New York, under and by virtue of a deed of trust executed by the Vicksburg Water Supply Company of Vicksburg, Mississippi, to the Farmers' Loan and Trust Company, trustee, recorded in Book — page —, of the records of deeds of Warren county, Mississippi, securing the payment of two hundred and fifty thousand dollars of bonds, and interest thereon there was sold under the said deed of trust all of the said property, real and personal belonging to the Vicksburg Water Supply Company, located in Vicksburg, Warren county, Mississippi, as well as elsewhere, and more particularly described as follows, to-wit: all of its real and personal property, goods and chattels now owned or which may hereafter be acquired by it, including its land, water works, buildings, pump houses, stand pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus, and equipments situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, rents, issues income and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has or can exercise or shall hereafter acquire and possess. And, also, all the estate, right title interest, property, possession, claim and demand whatsoever as well in law as in equity, of the water company, of, in and to the property above described, or hereafter acquired, and each and every part or parcel thereof, with appurtenances, together with one certain written contract existing between the Vicksburg Water Supply Company and the board of mayor and aldermen of Vicksburg, Mississippi, dated on the 18th

day of November, 1886, and approved on the 19th day of November, 1886, for the rental of hydrants, for the use of the public for thirty years, which was assigned to the Vicksburg Water Supply Company by S. R. Bullock & Company on the first day of March, 1887, and notice being duly given by the Vicksburg Water Supply Company to said board of mayor and aldermen on the first day of
301 March, 1887, of Bullock & Company's assignment of said contract to the said Vicksburg Water Supply Company, and of the Vicksburg Water Supply Company's acceptance of the said contract, whereupon the board of mayor and aldermen of the city of Vicksburg, Mississippi, accepted and approved said assignment on the 18th day of May, 1887.

Now, therefore, at said sale as aforesaid, said Vicksburg Water Works Company, of Vicksburg, Mississippi, purchased said property contract, etc., as above described, and set out.

Now therefore, for the consideration of one dollar cash in hand paid to the Vicksburg Water Supply Company, and for the further consideration of the benefit that the Vicksburg Water Supply Company have already derived through said contract, and for the further purpose of showing good faith on our part to the purchaser thereof, the Vicksburg Water Supply Company, through its president, hereby conveys and quit-claims all of the right, title interest of every kind and nature whatsoever, it may have in and to the aforesaid property, as above described, real and personal, or that it may now own, or may have owned or may acquire hereafter, including said contract with the board of mayor and aldermen aforesaid, situated in the city of Vicksburg, county of Warren, State of Mississippi, unto the Vicksburg Water Works Company of Vicksburg, Mississippi.

In witness whereof, the Vicksburg Water Supply Company has caused these presents to be signed in its respective corporate name by its respective president, and its corporate seal attested by its respective secretary, to be hereto affixed on the 18th day of October 1900.

Revenue stamps having been affixed to deed from Farmers' Loan and Trust Company, to Vicksburg Water Works Company, we deem it unnecessary to affix the same hereto.

(Signed) WHITNEY CONANT,

[SEAL.] *President of the Vicksburg Water Supply Company.*

W. G. SNOW, *Secretary.*

STATE OF NEW YORK, *New York City and County, ss:*

Personally appeared before me, Charles Edgar Mills, a duly authorized commissioner of deeds for the State of Mississippi in New York residing in New York city and State, the within named Whitney Conant president of the Vicksburg Water Supply Company, and W. G. Snow, secretary, who each acknowledged that they signed, sealed and delivered the foregoing deed on the day and year therein mentioned to be the free and voluntary act and deed of the Vicksburg Water Supply Company for the use and purposes therein men-

tioned, they being hereto duly authorized. That the corporate seal attached is the corporate seal of the said company, and was duly affixed thereto by authority.

302 Given under my hand and official seal, this October 18, 1900.

(Signed) CHARLES EDGAR MILLS,
[SEAL.] *Commissioner for the State of Mississippi in New York and Notary Public for New York County and City.*

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 10th. day of December, 1900, at 9-10 o'clock, a. m., and duly recorded in Deed Book No. 93, page 463 *et seq.*

Witness my hand and seal of said court, this 10th. day of December, 1900.

(Signed) J. D. LAUGHLIN, *Clerk,*
[SEAL.] By J. L. HYLAND, *D. C.*

(Exhibit "D.")

EXHIBIT "F."

At a regular meeting of the mayor and aldermen of the city of Vicksburg, Mississippi, held on the 7th. day of November, 1900, amongst other proceedings had at said meeting, was the following, to-wit:

Resolved, That the mayor be, and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of the said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.

I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand and seal of said city, this 13th. day of November, 1900.

—— ——, *City Clerk.*

(Exhibit "F.")

EXHIBIT "G."

VICKSBURG WATER WORKS COMPANY,
VICKSBURG, MISS., *Sept.* 18, 1901.

To the mayor and aldermen of Vicksburg, Mississippi.

GENTLEMEN: This communication is for the purpose of laying certain facts before your body, which we wish remedied as

303 early as possible, together with a suggestion which we think will be a fair and just solution of the matter, both to the city and water company.

The facts we wish to lay before your honorable body are these: Some time in the month of April, 1901, the water company permitted you to make a tap in its mains on Crawford St., at Washington engine house, for the purpose of connecting the water company's water with a recording gauge your honorable body had just bought, for the purpose of keeping a record, to see if the water pressure the water company was maintaining was up to the requirements.

We beg now to say that the valve in the supply pipe to the gauge is kept closed so tightly that the correct pressure cannot get to the gauge, hence an incorrect record is made. I have investigated the gauge several times since it was put in and found such a great variance between the water company's gauge and it, that I called in disinterested witnesses, calling their attention to the difference between the gauges. I then demonstrated to them by opening the valve so that the water could flow freely to give the city gauge the correct pressure of the water, and when this was done, the needle of the gauge immediately went up considerably higher than what it was recording before the opening of the valve.

This incorrect record that is being made, might be used against the water company under our contract, wherein it provides that the water company shall keep 20 pounds pressure at the highest distributing point of its line of mains, and that, if — a period of two calendar months in succession, the pressure should remain below 20 pounds at said highest point, the board of mayor and aldermen could, at their election, declare the contract at an end.

The suggestion the water company begs to offer, that would be fair and just to your honorable body, and to the water company is, that the gauge be placed in the office and in charge of the local secretary of underwriters of the city of Vicksburg, he being a disinterested party. If this meets with your approval, the water company will be willing to pay the expense of said removal.

The water company must insist upon the gauge being placed in charge of some disinterested party, that they may keep the record. And we bey to say that this communication is submitted in the most kindly feeling, but with the view that the rights of the water company must be protected. Or, if you will open the valve until the needle vibrates it will be satisfactory to the water company to let the gauge remain where it is because that will be evidence that the water has a free and unobstructed flow to the gauge.

Respectfully submitted,

M. O. CRUMPLER,
Sec. & Treas.

(Exhibit "G.")

304 EXHIBIT "H."

Call at office and pay before 10th, and save 10 per cent. damages

.....

Premises .....

To City Water-Works & Light Co. Dr.
Vicksburg, Miss.

Office hours from 8 a. m. to 6 p. m. Register No. —.

.....Statement .....190–.
.....Statement .....190–.
.....Feet .....Gallons.

Per 100 gallons.

Domestic or residence and commercial meter rates for a daily average consumption of 1000 gallons or less..... 4½c.
From 1000 to 2500 gallons or less..... 3½c.
" 2500 to 5000 gallons or less..... 2½c.
" 5000 to 10000 gallons or less..... 2c.
" 10000 to 25000 gallons or less..... 1½c.
" 25000 to any amount upwards..... 1¼c.

Amount of bill..... $.....
Total ..... $.....

Received payment:
CITY WATER-WORKS & LIGHT CO.,
Per —— ——.

Date —— ——.

Regulation: For each premises of an average daily amount of not less than 150 gallons, or 6⅔ cents for residences, and 185 gallons, or 8⅓ cents for commercial uses. These amounts cover all expense of reading meter monthly, together with cleaning and light repairs of meter by the water company when necessary. Customers to furnish meter.

Patrons take water subject to having it cut off in the mains for repairs, improvements, or otherwise, and without rebate, damage or any demands or claims against the water company.

Test Your Meter.

Every water consumer who takes water by meter measurement, owes it to himself to know that he is paying for no more water

than he receives. He should therefore, learn to read his meter, and be careful to observe that there is no waste of water, and if any leak is found in his pipes or fixtures, it should be repaired immediately, as any waste, however small, it may appear when running, will look large when found on the bill, and the water company has no alternative but to charge for the full amount whether consumed or wasted.

A meter will not register more water than passes through it, popular opinion to the contrary notwithstanding, and if surprised at the size of your bill, test your meter; it requires no expert to do it, and a simple method is this: See that no water is being drawn from any of the fixtures, and watch the circle on the dial registering the smallest number of cubic feet. If the hands move at all there is a leak somewhere, the extent being known by the movement of the hand. If this is the case find it and have it stopped. Finding no leak the hands remain stationary, draw into a tank, or vessel of which you know the exact contents, an amount of water, and you will find on referring to the dial, that too much has not been registered it may be less; more, never.

If the lowest circle registers one cubic foot for every 7½ gallons passed, the hand will make one complete revolution, and the hand of the next higher circle ten cubic feet, will move one point.

The intention of the above is to put it into the hands of every consumer to satisfy himself of the accuracy of his bill at any time.

(Exhibit H.)

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Deposition of M. O. Crumpler. Filed Feb'y 29, 1904. L. B. Mosely, clerk. J. H. Short, D. C.

Defendant's Evidence.

The complainant having introduced all its evidence the following depositions were then read on behalf of the defendant.

Deposition of W. L. Trowbridge.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Mr. W. L. Trowbridge, of Vicksburg, Mississippi, to the following interrogatories and cross interrog-

atories, when made and verified by oath before any officer au-
306 thorized to administer oaths may be read by the defendant on the hearing of the above entitled cause as evidence subject only to objections for irrelevancy and incompetency, notice commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words and figures, to-wit:

"Sworn to and subscribed before me, this the — day of ——," and signed by the officer with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.
HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, and place of residence.

Int. 2. State what official position, if any, you now hold in the city of Vicksburg, Mississippi.

Int. 3. If you state in answer to interrogatory two that you are mayor of the city of Vicksburg, state how long you have held said office.

Int. 4. State how long you have been a resident and citizen of the city of Vicksburg.

Int. 5. State, if you know, what has been the character or quality of water furnished to defendant city and its inhabitants by Samuel R. Bullock & Co., the Vicksburg Water Supply Co., and the Vicksburg Water Works Company, has it been at all times good and wholesome and fit for all purposes of domestic or manufacturing consumption.

Int. 6. State who was the superintendent and general manager of said water works system operated by the above named Vicksburg Water Supply Company, and how long he served as such superintendent and general manager.

Int. 7. State who is and has been the superintendent and general manager of said water works system since the same has been owned and operated by the Vicksburg Water Works Company.

Int. 8. State whether the service rendered by the Vicksburg Water Supply Company, or the service rendered by the Vicksburg Water Works Company has been the better, and wherein the service was made better or worse by the change in the said management.

Int. 9. State, if you know, whether the defendant, The Mayor & Aldermen of the City of Vicksburg in urging the passage by the legislature of the State of Mississippi, bill approved March 9th, 1900,
307 authorizing the said defendant to issue bonds in the sum of $150,000 for the purpose of purchasing or constructing a water works system, did so for the purpose of injuring

the Vicksburg Water Supply Company, or its successor the Vicksburg Water Works Company, in any way, or of forcing it to sell to defendant its waterworks system at an inadequate price, or for the purpose of abrogating and taking away from said company, or either of them, any of its franchises or contract rights. State as fully as you can the conditions under which said legislation was procured and the real purpose of the defendant in advocating same.

Int. 10. State, if you know, whether the resolution of the defendant The Mayor and Aldermen of the City of Vicksburg, passed November 7th, 1900, had any reference to or connection with the said act of the legislature, and whether or not they were inspired and procured under any general plan, or as the result of any conspiracy between said defendant, and the inhabitants of the city of Vicksburg or the officers of said city, or either or any of them.

Int. 11. State, if you know, the real object or purpose of, or inducement to, the passage of the said resolution by defendant.

Int. 12. State, if you know, whether said resolution was passed for the purpose of injuring complainant in any way, or of hindering or delaying complainant in the collection of any amount that may have been due by defendant to complainant.

Int. 13. State, if you know, whether or not that said resolution was passed by defendant for the purpose of impairing the credit of said complainant, or of depreciating the value of its property or of disabling it from carrying on its business or to coerce it to sell its property to defendant at an arbitrary or inadequate price, or for the purpose of casting any cloud on complainant's title, franchises and rights, or for the purpose of abrogating and taking away any of the franchises and contract rights of complainant.

Int. 14. Do you know what person or corporation owned a controlling interest in the stock and bonds of the Vicksburg Water Supply Company, and if you know whether or not such person or corporation had been offering such stock and bonds for sale, or not, and if so, at what price.

Int. 15. Do you know whether or not it was considered by the mayor and aldermen individually and collectively, that $150,000 issue of bonds would be amply sufficient to purchase and pay for the water works system then in operation, in the city of Vicksburg and owned by the Vicksburg Water Supply Company.

Int. 16. State, if you know whether or not the mayor and aldermen of the city of Vicksburg, at any time granted permission for the offal and excrement from water closets and other sewerage to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 17. If you state that such permission was granted, state whether or not the Vicksburg Water Supply Company, through its officers and agents had any notice or knowledge of such
308 permit or permits as may have been granted, and if you state that said water supply company did have such knowledge, state whether or not said water supply company entered any protest or objections to such permit or permits being granted.

Int. 18. State what means the said water supply company had of knowing exactly how many, and what water closets were so connected with said sewer and discharged into and through the same.

Int. 19. State, if you know, whether any closets or buildings were connected with said sewer and discharged into and through the same other than those which received from the mayor and aldermen of said city of Vicksburg such permits, and if you state that there were, state if the said Vicksburg Water Supply Company had any knowledge of such connection, and if you state that it did, state how you know it had such knowledge.

Int. 20. State, if you know, whether or not that Vicksburg Water Supply Company had full knowledge in each and every instance of every building or watercloset therein being connected with said sewer and discharging excrement and offal into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 21. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active co-operation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company, or the Vicksburg Water Works Company.

Int. 22. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR AND
BRYSON & DABNEY,
For Def't.

Answers of W. L. Trowbridge to Interrogatories.

Ans. 1. W. L. Trowbridge, 56 years of age, residence, Vicksburg, Miss.

Ans. 2. Mayor of the city of Vicksburg.

Ans. 3. Since Jan'y 1893.

Ans. 4. Since 1847.

Ans. 5. At times the water has been exceedingly muddy, but I could not say whether or not it has at all times been fit for domestic and manufacturing consumption.

Ans. 6. Chester R. McFarland. Served about 10 or 12 years.

Ans. 7. M. O. Crumpler.

309 Ans. In a general way there were not as many complaints during the administration of Mr. McFarland as there have been during the administration of Mr. Crumpler. I consider the service given by Mr. McFarland very much the better. The pressure of water for fire purposes was better maintained during the ad-

ministration of Mr. McFarland than during that of Mr. Crumpler. Since the administration of Mr. Crumpler there have been times when we had no water pressure whatsoever, which condition occurred only once during the administration of Mr. McFarland.

Ans. 9. The mayor and aldermen of the city of Vicksburg had no knowledge whatsoever when they were advocating the passage of a bill for the issuance of bonds to purchase or construct waterworks that Mr. Crumpler was in the land of the living. These works, as I recollect, had been indirectly offered to the city for about the sum of $125,000, and the city was putting herself in a position to purchase the said works from the First National Bank of New York, and there was no purpose whatsoever of doing any injury to the water works company. The city had no knowledge that they were intending to buy the waterworks at that time.

Ans. 10. Most emphatically no. Said resolution had no reference whatever to the act of the legislature, and further, it was not passed as the result of any conspiracy or plan upon the part of the board of mayor and aldermen to in any way injure the water works.

Ans. 11. We wanted to test the legal rights of the city as to whether or not the Vicksburg Water Works Company had a valid contract with the city to supply water and to force the city to pay for it in regard to the fire hydrants.

Ans. 12. I should say no, said resolution was not for that purpose at all, but the real purpose as I understood it at the time is stated in answer to Int. 11.

Ans. 13. I am positive there was no such purpose entertained by the board of mayor and aldermen, or any of them. We simply wanted to test the legal rights of the city, as to the validity of the contract between it and the water works company.

Ans. 14. The First National Bank of New York owned the bonds of said water works company, and I understood from different persons that the bank desired to sell the system of waterworks. My recollection is that the price named was about $125,000.

Ans. 15. Yes, positively, and while we had no direct correspondence with the First national bank in New York, we understood from its agent here, Mr. McFarland, that we could get it for a sum considerably under $150,000 but we did not know what the bonds would bring, and to give ourselves an ample margin, we thought it best to have authority to issue $150,000 in bonds.

Ans. 16. There was one grant as to my knowledge given by the city for that purpose, and that was for the Sisters Xavier's college.

Ans. 17. I can answer that in a general way by saying that said water supply company must have known, and did know of such permit or permits, from the fact that all connections made by
310 any plumber in the city was reported to said company, and hence it had full knowledge of such connections and the purpose for which they were to be used. No protest was ever entered by the Vicksburg Water Supply Company to my knowledge.

Ans. 18. I have answered this in my answer to interrogatory 17, that the plumbers made a report to the water company of all con-

nections made by them, and hence the water company must have known of such connections.

Ans. 19. There must have been a great many. The water company had the same means of knowing in regard to this as it did where permission was given by the city.

Ans. 20. Most assuredly as stated in my answers to interrogatories 17, 18, and 19, it had such knowledge, and gave consent by allowing the plumbers to make such connections, furnishing the water and filing no protest with the board.

Ans. 21. Most assuredly the same could not have been done except by the assistance of the water from the water company.

Ans. 22. I believe I have embodied all my knowledge in the foregoing answers, that I consider beneficial to either party or material to the case.

W. L. TROWBRIDGE.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, United States commissioner, of the United States circuit and district courts in and for the western division of the southern district of the State of Mississippi, W. L. Trowbridge, who, after being by me duly sworn, states that the foregoing answers made by him in answer to interrogatories from 1 to 14 inclusive are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

Witness my hand and official seal, this the 5th day of April, 1904.

J. H. SHORT,
U. S. Com'r.

[SEAL.]

The above and foregoing has the following indorsement thereon, to-wit:—#41. Equity. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the city of Vicksburg. Deposition of W. L. Trowbridge. Filed 4/5/04. L. B. Moseley, clerk. J. H. Short, D. C.

311 *Deposition of Chester R. McFarland.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Chester R. McFarland, of Tampa, Florida, to the following interrogatories and cross interrogatories, when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of

the above entitled cause, as evidence subject only to objections for irrelevancy and incompetency and leading questions, notice, commission and all other matter of form, being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words and figures, to-wit:

"Sworn to and subscribed before me this the — day of ——" and signed by the officer with proper dates filled in the blanks above shown.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation, or profession.

Int. 2. If you state that you are by profession a civil engineer state where you received your education for said profession, and if you are a graduate of any school of engineering give the name of same, and when you graduated from same.

Int. 3. State how long you have been following such profession, and in what particular line or lines of civil engineering you have been engaged *in,* and also the particular work or works on which you have been employed.

Int. 4. State if at any time you were employed on the Vicksburg Mississippi, water works system, constructed by Samuel R. Bullock & Company, and afterwards operated by the Vicksburg Water Supply Co., and still later by the Vicksburg Water Works Company, either in the construction or in the operation thereof.

Int. 5. If you state that the said Vicksburg water works system was constructed under your supervision, or that you were at any time employed in and about constructing the same, give as well as you can, a description of the plant, that is, the size and character of the pump-house, and the settling basins, the number, size
312 power and capacity of the boilers and of the engines and pumps, the length of the mains, and size and quality of materials used in the construction thereof, the size and capacity of the standpipe, and all other integral parts of said waterworks system, and the approximate cost of the several parts and the aggregate cost of the whole system.

Int. 6. State if the said plant was economically constructed and whether or not the actual cost was approximately what it ought to have been, and if you state that it was not, state approximately what the system as constructed should have cost.

Int. 7. State, if you know, what additions to the plant were made from the time the plant was constructed, and accepted by the mayor & aldermen up to the 8th day of August, 1900, particularize the addition thereto, as to boiler, power, pumps mains, and all other items of additional machinery or appliances.

Int. 8. State, as near as you can, the exact description of the waterworks plant at said city of Vicksburg on the 8th day of August, 1900, giving a description in detail of the pumping station, size and

character of buildings, size, name and description of all machinery and appliances in the pumphouse and between the pumphouse and the river, the settling basins, mains, standpipe hydrants, and all other machinery, ways, means and appliances, used in obtaining a supply of water and delivering same to consumers in the said city of Vicksburg.

Int. 9. Give in detail, if you can, an estimate of the value of said waterworks system, owned and operated as aforesaid, on or about the 8th day of August, 1900.

Int. 10. State, if you made any estimate of the cost and value of said system about said date of August 8th, 1900, and if you state that you did, state whether the figures then made correspond with the estimate given in answer to direct interrogatory nine.

Int. 11. State if you at any time prior to August, 1900, had an option to purchase the said system of waterworks at Vicksburg, and if you state that you did, state as nearly as you can, the time when you had such option and when same expired, and the price of said system named in said option.

Int. 12. State as nearly as you can estimate, the rate per cent. of the depreciation per annum of a waterworks system such as the one in said city of Vicksburg, in so far as the same is caused by actual wear and tear by use and operation.

Int. 13. State, if you know, whether there has been any very great fluctuation or change in the cost of material, machinery and supplies used in and about the construction of a waterworks system between the period of August 8th, 1900, and the present date, and if so, has such cost been increased or diminished and to what extent has it effected the value of the said waterworks plant at Vicksburg, Mississippi.

Int. 14. Can you give an approximate estimate of the value of the said waterworks plant in Vicksburg as of the date of your answers hereto, said estimate to be based on the plant as it stood on
313 August 8th, 1900, on the hypothesis that no additions or enlargements have been made to said plant since said date, and that no depreciation has taken place other than that caused by ordinary wear and tear.

Int. 15. State whether or not the machinery and appliances in use by the Vicksburg Water Supply Company, prior to August 8th, 1900, and for some time after said date by the Vicksburg Waterworks Company, was old, worn, or antiquated, and whether there was on the market at the time machinery better suited for the work to be done and more economical of management, and if so, name and specify such machinery or appliances, and whether or not you have considered the same in making your estimates as given in answer to any of the foregoing interrogatories.

Int. 16. State definitely, the means or appliances in use by the Vicksburg Water Supply Company when it first took charge of and operated the said plant at Vicksburg, Mississippi, for obtaining its supply of water from the Mississippi river and transferring the same to the settling basins at the pumping station.

Int. 17. State if the appliances used for so obtaining a supply of

water and lifting the same from the said Mississippi river and transferring it into its said basins, has at any time been changed, and if so, when, and what was the change made.

Int. 18. Describe the means, ways or appliances in use by the Vicksburg Water Supply Company on and for some time prior to August 8th, 1900, and by the Vicksburg Water Works Company for some time after said date of August 8th, 1900, in thus obtaining from the said Mississippi river a supply of water and in lifting and transferring same from said river to the settling basins of said system of waterworks.

Int. 19. If you state that as a part of the said ways, means and appliances there was maintained and operated on the banks of the said river, one or more engines or pumps which had to be shifted up and down the bank of said river, as the water rose or fell, state whether it was necessary while so shifting such engine and pump or engines and pumps, to stop the pumps which supplied the water mains and cut off the supply of water from the mayor & aldermen of the city of Vicksburg, and the inhabitants of said city.

Int. 20. If you state that it was, state how long you found it necessary to keep said plant shut down and out of operation so far as supplying water was concerned at each shift of the said pump or pumps on the river bank.

Int. 21. State how long you had charge of the said water works at Vicksburg, Mississippi, as manager and superintendent of the same.

Int. 22. State if at any time during your management of the same, you closed down and ceased to supply said city and its inhabitants with water and if you state that you did close down on one or more occasions, state as well as you remember how many different times you allowed said water works plant to stop and fail to supply said city and its inhabitants with water and what were
314 the several causes which led up to or induced you to stop said plant from supplying water to said city and its inhabitants, state in detail.

Int. 23. State the capacity of said waterworks plant for supplying water to consumers in gallons per day of twenty-four hours, both as to its capacity to take water from the said Mississippi river and transfer the same to its basins, and as to its capacity to pump water from its basins through its mains to consumers, and particularly whether or not its capacity was equal to four million gallons a day either from river to basins, or from basins to consumers.

Int. 24. State whether or not said waterworks plant maintained duplicate engines and pumps for supplying its basins with water from the Mississippi river, and if you state that it did, state what was the capacity of such engine and pump or engines and pumps severally and the capacity of both if worked at the same time, provided you say that both could be worked together.

Int. 25. If you state that you at any time had charge of the said water works plant at Vicksburg as manager or otherwise, state whether or not during said time you had any trouble with the mayor and aldermen of the city of Vicksburg in regard to the char-

acter of service rendered and whether or not you observed on the part of said mayor and aldermen, or any of them, a desire to wrong or oppress the waterworks company or those in charge of it.

Int. 26. If you state that you did not have any friction or trouble with said mayor and aldermen or any of them, state whether or not you found said mayor and aldermen and all of them disposed to deal fairly with the water works management, and to be just towards you and the company you represented.

Int. 27. State whether you heard during the time you represented said company, any complaint of the kind or character of water being furnished by said water supply company either from the mayor and aldermen of said city, or from the inhabitants of said city, and if you state that you did, state the nature of such complaint, and the source from which the same emanated, and whether or not you considered it well founded.

Int. 28. State, if you know, when the mayor and aldermen gave the first permit to have sewerage and the offal from water closets discharged into and through the sewer which extends along and under Washington street in the said city of Vicksburg.

Int. 29. State if you know, the person, firm or corporation which received from said mayor and aldermen, the first permit to so empty sewerage and offal into and through said sewer.

Int. 30. State whether or not you were in charge of said waterworks as the general manager and superintendent of the same when the water closets of the Carroll hotel, Piazza hotel, jail, opera house post office, and many of the business houses on Washington
315 street, and many of the dwellings east of Washington street were permitted to discharge their sewerage and offal into and through the said sewer.

Int. 31. State whether you or the water supply company interposed any objection to the offal from said watercloseets and other sewerage matter being discharged into and through said sewer.

Int. 32. State whether or not during the time you were superintendent of and in charge of the business and affairs of said water works system that any objection was made and any interference offered by those in charge of said water works system to the discharge of effete matter, offal and sewerage into and through said sewer?

Int. 33. State whether or not said waterworks management encouraged the use of said sewer for the discharge of polluted sewerage matter during all the time you were familiar with the business and affairs of said water supply company.

Int. 34. State if it is not a fact that each watercloset connected with said sewer helped to increase the business of said waterworks system and to swell its revenues.

Int. 35. State, if you can, approximately, what was the gross earnings of said water works system at Vicksburg, and what was the expense for operation and maintenance, taking no account of interest paid on bonds, and what its net profits for several years preceding August 8th, 1900, give the fiscal year adopted by said company and

let your figures cover the two fiscal years next preceding the said 8th. day of August, 1900.

Int. 36. State if you were not in charge of said waterworks system in the city of Vicksburg, Mississippi, on the 9th. day of March, 1900, at the time the legislature of Mississippi, passed a law authorizing the mayor and aldermen of the city of Vicksburg to issue bonds in the sum of $150,000.00 to buy and build a water works plant, which said act appears on pages 180, 181, 182, 183 and 184 of the sheet acts of the legislature of the State of Mississippi for the year 1900, and if you state that you were, state whether or not you had any knowledge of the said act before the same was introduced before the legislature of the State of Mississippi.

Int. 37. State whether or not you conferred with one or more members of the legislature in regard to said bill, and urged its passage with the open and avowed purpose of selling the said waterworks system to the said mayor & aldermen of the city of Vicksburg.

Int. 38. State, if you know, whether or not at the time from the time said bill was introduced in the legislature up to and including the time when it became a law of the State and for some considerable time thereafter, that the Vicksburg Water Supply Company was offering its entire waterworks system in the said city of Vicksburg, for sale at a sum considerably under one hundred and fifty thousand dollars.

Int. 39. Can you state what individual or corporation owned the bonds issued by the Vicksburg Water Supply Company and
316 the amount of bonds issued by said company, and unpaid and outstanding against said company, at the time said act of the legislature was passed and became a law, and from that time up to the 8th day of August, 1900, if you can, give the name of such holder or holders of said bonds, and the amount of said bonds, so outstanding.

Int. 40. State, if you can, what individual or corporation owned a majority of the stock issued by the Vicksburg Water Supply Company, giving the name of such individual or corporation, and the amount of such stock so held or owned.

Int. 41. State if at any time from the passage of said act up to the 8th. day of August, 1900, you had authority from the holder or owner of said bonds and a controlling interest in said stock to sell the same to the said mayor and aldermen of the city of Vicksburg, or anyone else, at a price equal to or below the said sum of one hundred and fifty thousand dollars, and if you state that you did, name the person or corporation from whom you obtained such authority, and the price at which you were authorized to sell said stock and bonds or the said system of waterworks giving particulars.

Int. 42. State if you received any letter or letters in regard to the sale of said waterworks system, or the stock and bonds issued by said water supply company, and if you did, state from whom you received the same, and append the same to your answer hereto as exhibits.

Int. 43. State whether or not there was any plan or agreement between you and the said board of mayor & aldermen to have the

said act authorizing the said mayor and aldermen to buy the said system of said water works at $150,000, passed and then to negotiate a sale of said system to said mayor and aldermen in accordance with the provisions of said act, and if you should state that there was such an agreement or understanding, state the same in full.

Int. 44. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR AND
BRYSON & DABNEY.

Cross-interrogatories to Chester R. McFarland.

X Int. 1. If you state in answer to direct interrogatories that the First National Bank of New York City was the owner of the first mortgage bonds, and a majority of the stock of the Vicksburg Water Supply Company, and that you were the superintendent of the water supply company before the new management, the Vicksburg Water Works Company, took charge of the plant on August 15th, 1900 state if you did not, after you found out that the new management did not intend to keep you as superintendent of the works,
317 write a letter to the First National Bank of New York City, or some one of its officers, suggesting to the bank that if there was any way for the bank to get out of the sale made to M. O. Crumpler you thought it best for the bank to do so as the city of Vicksburg was then in a position to buy the plant, and that a sale could be made to the city. Please attach a copy of said letter, or any letter to that effect, to your deposition as an exhibit thereto.

X Int. 2. If you state in answer to the preceding cross interrogatory that you wrote such a letter to the First National Bank of New York City, state if you did not feel positively sure, or have the assurance, that if the city of Vicksburg bought the water works plant, you would be retained as superintendent; and if said letter was written by you, state if it was not after consultation and an understanding between the attorney for the old water supply company, and yourself. Also state whether or not the attorney for the old water company was retained by the new management, the Vicksburg Waterworks Company, and state where you had your office after the new management took charge during your stay in Vicksburg.

X Int. 3. If you state that you were the superintendent of the old water supply company up to the time the new management took charge, state if you did not influence both of the engineers for day and night service who were under your employment to quit the plant and if it is not a fact that both of them did quit, at the same time, and within ten days after the new management and even before the end of the month, and without giving any notice to the new management that they intended to quit.

X Int. 4. Who was the president of the Vicksburg Water Supply Company in 1889, 1900 1901, and who was its superintendent during those three years?

X Int. 5. Did not Mr. William York Atlee, as president of the Vicksburg Water Supply Company, prepare for the use of the First National Bank, of New York City, some time in 1890, or thereabouts an abstract of the charter of the Vicksburg Water Supply Company, the names of its officers, a copy of the ordinance and franchise a description of the property of the company in detail a statement of its bonded debt, average consumption of water, operating expenses, and a statement of the cost of the plant to that date, with a plat of the property?

X Int. 6. Did you not assist in preparing said report and furnish a greater part, if not all, the data contained in the report?

X Int. 7. Did not this report meet your approval?

X Int. 8. Did you not know that this report was being prepared for the First National Bank of New York City, to enable it to determine the condition, character and value and cost of the plant as well as its yield?

X Int. 9. Does not the report show a total cost of the works to that date to be two hundred and seventy-five thousand to three hundred thousand dollars?

318 X Int. 10. State, in detail, how much money was spent on the plant in improvements from the 1st of January, 1890, to 15th of August 1900.

X Int. 11. State specifically the character of the improvements the names of the parties, and their residences, from whom the materials were furnished, and the amount paid for labor since 1st of January, 1890 to August, 1900.

X Int. 12. State with what waterworks system you were connected and in what capacity prior to your employment with the Vicksburg Water Supply Company.

X Int. 13. If in answer to direct interrogatories 9 and 10, you have stated that you made said estimates, please state for whom you made them, and at whose request, and file herewith said estimate in detail, if you have it, and if you have parted with possession of it, state whom you gave it to, and file here with your answer hereto a correct copy of said estimate, if you have not the original.

X Int. 14. Referring to direct interrogatory 11, file herewith said option if you have ever had one.

X Int. 15. What particular part of the machinery or appliances on the 8th of August 1900 or prior thereto, was in use by the plant that was old, worn, or antiquated, or unnecessarily expense in management, and what would be the cost of supplying such parts of machinery or appliances? Did you not, in 1902, at the instance of the committee in Vicksburg make a report of the condition of the machinery then in use by the plant, and if so, what was your report, and what would be the approximate cost to comply with your recommendations contained in said report to put the plant in first class condition?

X Int. 16. What was the capacity of your reservoir?

X Int. 17. State whether or not the water company installed two pumps of two millions of gallons capacity each in twenty-four hours, and whether or not they were so installed so that they could be operated separately or together, and whether or not said pumps remained in said plant from the time of installation up to the 15th of August, 1900, covering the entire period you were superintendent.

X Int. 18. Referring to direct interrogatory 27, state whether such complaint was by way of resolution or ordinance, and if so, file a copy of the same with this answer.

X Int. 19. Referring to direct interrogatories 28 to 33 inclusive, if you state that you did not object, discourage, reprobate, or disapprove in any way the discharge of polluted sewerage matter through the Washington Street sewer state whether your directors or superior officers authorized you to acquiesce therein, or withhold your objection thereto, giving the names of such officers and the dates of the meetings of the directors and the evidence of such authority.

X Int. 20. Have you not several times, since you became superintendent, endeavored to buy the plant and to that end endeavored to organize companies to buy the plant?

X Int. 21. What commissions or interest were you to get
319 for acquiring said plant in the sale of it through you, or those with whom you were co-operating in the sale of the property?

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Depositions of Chester R. McFarland, a Material Witness in the Above Entitled Cause, Taken by Me This 8th Day of March, A. D. 1904.

In answer to the first direct interrogatory propounded by the defendant, the witness testified as follows:

My name is Chester R. McFarland. My age is 48. Residence Tampa, profession, civil engineer.

In answer to the 2nd direct interrogatory, the witness testified as follows:

I received my education in private schools in New Castle, Pennsylvania.

In answer to the 3rd direct interrogatory, the witness testified as follows:

25 years. I have been engaged in civil engineering, and the location and construction of steam railroads, and construction and operation of waterworks. For the last eighteen years in the construction and operation of waterworks; I was employed on the waterworks of

Massilon, Ohio, Vicksburg, Miss., Natchez, Miss., Monroe, Mich., and at Tampa, Fla.

In answer to the 4th direct interrogatory the witness testified as follows:

I was employed first by Samuel R. Bullock & Co., during the construction of this work, and afterwards by the Vicksburg Water Supply Company in the operation of said works. In the construction of these works by Samuel R. Bullock & Co. I was the resident engineer and constructed these works in accordance with the plans of C. E. Delafield.

In answer to the 5th direct int. the witness testified as follows:

The pump house. A brick building of about 40 x 70, divided into two rooms, one to be used as a room for pumping machinery, and the other for a boiler room; the settling basins were about 350 feet long by 100 feet wide, one half of which has a depth of about seven feet and the other half about ten feet; these settling basins were divided into several compartments for the purpose of settling this water before it was pumped to the city. There was also designed by C. E. Delafield a filter which was a complete failure. The boilers were two in number, 60 inches in diameter by 16 feet
320 long, each containing about fifty 4 inch tubes of approximately 75 H. P. each; the mains consisted of about twelve miles of 6, 8, and 16 inch, the most of which were six inch pipe, the standpipe was twenty feet in diameter by 140 feet high; there was two vertical differential plunger pumps for lifting the water from the river of the settling basins and each of a capacity of about 1,000,000 gallons; there was also two horizontal, duplex, compound condensing Dean steam pumps, each of about two million gallons capacity for delivering the water from the settling basins to the city. The materials used were first class in every respect.

In answer to the 6th direct int. the witness testified as follows:

It was not economically constructed for the reason that the materials were purchased by Samuel R. Bullock, after he had considerable financial difficulty, and therefore he had to pay prices which were much in advance of the cash market prices; and also, during the construction of this plant, work was suspended for quite awhile on account of his financial difficulties. It would be impossible for me to state what the system should have cost him unless I had the market prices of materials at that time before me, which I have not.

In answer to the 7th direct int. the witness testified as follows:

What was added was about four miles of 6 inch mains, one 75 H. P. boiler, and two duplex steam pumps and the piping necessary to connect the same with the settling basins. These pumps were to be used in lifting the water from the river into the settling basins.

In answer to the 8th direct int. the witness testified as follows:

All the appliances mentioned in the answer to interrogatory No. 5 and to the interrogatory No. 7 were then in use except the two vertical, differential, plunger pumps.

In answer to the 9th direct int. the witness testified as follows:

It is a difficult matter to make an estimate on this property without having before me maps showing all the valves, hydrants and

pipe lines in said city, but going over the items as I recollect it this plant was worth, at that time, about $140,000.00: that is, it would have taken that amount of money to have duplicated it. Of course there was some depreciation owing to ordinary wear and tear.

In answer to the 10th direct int. the witness testified as follows:

I don't recollect having made any estimate of the value of the property at that time.

In answer to the 11th direct int. the witness testified as follows:

Prior to that time, I had one or two different options on this property, and the last was cancelled the early part of the year 1900. The price named in the option was $130,000.00, or $135,000.00 cash; my recollection is that it was $130,000.00.

In answer to the 12th direct int. the witness testified as follows:

This is a matter in which there is a very great diversity of opinion, but it is generally conceded that 5 % is a fair depreciation on machinery. This would be too high for the other parts of the system. The conditions in regard to soil are very favorable in
321 Vicksburg to a long life of cast iron pipe. Another cause of depreciation in many places is the growth of the city, which would cause the company to abandon certain parts of its works and replace it with larger, but this was not the case in Vicksburg, as the works were constructed of ample capacity for a much greater population than Vicksburg now has. Probably less than one per cent. would be sufficient to allow for depreciation on mains.

In answer to the 13th direct int. the witness testified as follows:

There has been a great change in the price of materials and labor, so that the value of the property has probably been increased twenty-five per cent.

In answer to the 14th direct int. the witness testified as follows:

It would probably take $175,000.00 to replace this plant at the present time, at the present prices of material.

In answer to the 15th direct int. the witness testified as follows:

I would say that the pumps were old and of low duty and expensive to operate; there was at that time on the market machinery which could have been operated with at least one-half of the fuel that was consumed by the present plant. I don't make any allowance for this in making my estimate, as in doing so I have simply estimated the amount of money necessary to replace the present machinery,—that is, of the same class.

In answer to the 16th direct int. the witness testified as follows:

I took charge of the operation of the Vicksburg Water Supply Company on the 1st. day of October, 1889; at that time they were obtaining their supply from the river by means of one or more small pumps on a raft, the vertical pumps having been abandoned some few months previous.

In answer to the 17th direct int. the witness testified as follows:

In reply to that I will say the plant was built with a view of using the vertical pumps in the building for taking the water from the river and delivering it into the settling basins; the suctions were broken off and when the river receded in the spring of 1889 they had to abandon these pumps and place pumps on the river bank.

In answer to the 18th direct int. the witness testified as follows: There was two duplex pumps located on the river bank and connected with the settling basins by means of spiral riveted and cast iron pipes; the size of one was 10 x 10¼ x 10, with a rated capacity of 1,197,000 gal. in 24 hours. The other is a duplex 9 x 12 x 10, with a rated capacity of 1,640,000 gallons; these pumps were moved up and down the river bank as the river rose and fell as the variation on the maximum to the minimum height of water was about sixty feet.

In answer to the 19th direct int. the witness testified as follows: It was not necessary to stop the pumps that were pumping from the settling basins to the city, if care was exercised, in moving these pumps at such times as when the basins were full of water. These basins held about two million gallons of water which was ample for more than one day's supply.

322 In answer to the 20th. direct int. the witness testified as follows:

The pumps used to supply the city were not shut down.

In answer to the 21st. direct int. the witness testified as follows: From October 1st, 1889 to August 15th, 1900.

In answer to the 22d. direct int. the witness testified as follows: My recollection is that I failed to keep the city supplied but once during the period of my management. This was due to floating ice in the river which broke off the suction as often as we would put it in place. This condition existed in a greater or less degree during one whole week, and during this time the city was out of water for about 36 hours, under all ordinary conditions there was no trouble to maintain a supply.

In answer to the 23d. direct int. the witness testified as follows: In the first place, the capacity of this plant to transfer water from the Mississippi river to the basins was only about 2,750,000 gallons, and to supply this water from the basins to the city the capacity was 4,000,000 gallons a day; but during the period when it was necessary to move the pumps at the river, one of these pumps would be out of service and of course the capacity would be about 1,200,000 or 1,600,000 in accordance with whichever pump was out of service.

In answer to the 24th. direct int. the witness testified as follows: As stated before, these were two pumps at the Mississippi river for supplying water to the basins, one at a rated capacity of 1,197,000 gal., the other of 1,640,000 gal. for each 24 hours. They could be and had frequently worked together.

In answer to the 25th. direct int. the witness testified as follows: I had no trouble whatever with the mayor & aldermen of the city of Vicksburg; found them perfectly fair in all their dealings with the said water works company.

In answer to the 26th. direct int. the witness testified as follows: I found them disposed to deal fairly with the water works company in all matters, and just towards the company.

In answer to the 27th. direct int. the witness testified as follows: I had many complaints from the inhabitants of the city of

Vicksburg about the muddy state of the water, and the complaint was from various consumers, and I felt that the same was well founded.

In answer to the 28th. direct int. the witness testified as follows: I do not know.

In answer to the 29th. direct int. the witness testified as follows: I do not know that.

In answer to the 30th. direct int. the witness testified as follows: I was.

In answer to the 31st direct int. the witness testified as follows: I objected to this connection but not formaly, as I believed it was dangerous to the health of the city of Vicksburg. Not so much because of contamination of the water supply as to the manner in which the outlet from this sewer was disposed of, as it dis-
323 charged out on to the ground and not into the water, as this sewerage flowed into Lake Centennial and its outlet was by West pass, so that this sewerage must have traveled at least three or four miles before emptying into the Mississippi river at a point probably about a mile above our intake.

In answer to the 32d. direct interrogatory, the witness testified as follows.

There was no objection made or interference offered.

In answer to the 33d. direct int. the witness testified as follows. We neither encouraged nor discouraged.

In answer to the 34th direct int. the witness testified as follows: It did.

In answer to the 35th. direct int. the witness testified as follows: I refuse to give this, as it was private affairs of the company by whom I was employed.

In answer to the 36th direct int. the witness testified as follows I was in charge of the water works plant on the 9th day of March 1900; I believe I had knowledge of this.

In answer to the 37th direct int. the witness testified as follows: I did urge its passage with the intention of selling the water works plant to the city of Vicksburg.

In answer to the 38th. direct int. the witness testified as follows: I do not know that to be a fact.

In answer to the 39th. direct int. the witness testified as follows: I only know that there was $250,000.00 of bonds outstanding and unpaid; they were held either by the First National Bank of New York, or by individuals interested in the said First national bank.

In answer to the 40th. direct int. the witness testified as follows: The majority of the stock was owned either by the First National Bank of New York, or by parties interested in said bank. I have not before me a list of the stockholders, and cannot state accurately who the stockholders were or the amount of stock they owned. I only know that the majority of the stock was controlled by the parties heretofore mentioned.

In answer to the 41st. direct int. the witness testified as follows: I did have authority to sell it at a price less than $150,000.00. I

obtained my authority from the First National Bank of New York City.

In answer to the 42d. direct int. the witness testified as follows:

I had several letters from the First national bank signed by an officer of the bank, but these letters I have not at hand as all the correspondence,—both letters and letterbooks in regard to this matter, are now in storage in the city of Cleveland, Ohio.

In answer to the 43rd direct int. the witness testified as follows:

There was no agreement between myself and the said board of mayor and aldermen of the city of Vicksburg. The mayor spoke to me, I believe, at one time in regard to getting an option on this property but I told him we would not give him an option; that the property was there for sale if he wished to purchase it; but
324 he was inclined to think that it would be better to build a new plant, and always intimated to me that he did not propose to pay us anything like the value of the property. In other words, he seemed to think that we were bound to take whatever he saw fit to offer.

In answer to the 44th. direct int. the witness testified as follows:

I don't know anything further of benefit in this case.

Answers to Cross-interrogatories Propounded to Chester R. McFarland.

In answer to the 1st. cross-int. the witness testified as follows:

In regard to this I will say that after M. O. Crumpler had contracted for the purchase of the property of the Vicksburg Water Works Company, I wrote to the First National Bank, and told them that I believed it was to their interest to not make the sale to the said Crumpler, as I had notified him when he was there looking at the property that the city had had an enabling act passed by the legislature so that they could purchase the said plant; that these bonds had not been voted upon by the city, but that I had no doubt a vote would be favorable. And when I saw that he intended to put a much higher price on the property, I believed he would antagonize the city, and create trouble that would depreciate the value of said property, and I had learned that he was to pay but $30,000.00 in cash, and $120,000.00 in first mortgage bonds of an issue of $150,000.00, thereby making them a partial owner of the property. I felt that anything that would depreciate the value of the property would be detrimental to the interests of my employer. I had no desire whatever to be employed by the Vicksburg Water Works Company of which M. O. Crumpler seemed to be the manager. This letter I do not have as the copy is now in the store-house in Cleveland.

In answer to cross-int. 2nd the witness testified as follows:

I had no assurance whatever from the city of Vicksburg as to my being retained as superintendent for the company; on the contrary I had frequently said that I was not hunting for a political job. I had no consultation whatever with the attorney of the old water

supply company, before writing this letter. The attorney for the old company I believe was not retained by the management of the new. I had desk room after the Vicksburg Water Works Company took possession of the property, in the office of L. W. Magruder, who had been and is today my personal friend.

In answer to the 3rd. cross-int. the witness testified as follows:

I said nothing whatever to these men about quitting; on the contrary advised them to retain their situations, as I had no place to offer them. I now have the day engineer in my employ, and he tells me that he quit because of the incompetency of a Mr. Delafield employed by M. O. Crumpler as general superintendent.

In answer to the 4th. cross int. the witness testified as follows:

In 1889 was William York At-Lee; in 1900 it was Whitney
325 Conant; in 1901,—I believe the company was defunct, as all its property was sold under foreclosure in 1900. In 1889 J. B. Brown was superintendent in 1900 I was superintendent, and in 1901 there was none.

In answer to the 5th. cross-int. the witness testified as follows:

At that time Mr. William York At Lee was in Vicksburg and prepared a statement of this nature, but I have no recollection as to the details.

In answer to the 6th. cross-int. the witness testified as follows:

I remember furnishing papers and certain figures from the books for Mr. At Lee at that time.

In answer to the 7th. cross int. the witness testified as follows:

I will say the report was never submitted to me for approval.

In answer to the 8th. cross-int. the witness testified as follows:

I did not know the report was being prepared for the First National Bank of New York City.

In answer to the 9th. cross-int. the witness testified as follows:

I do not know that such was the showing of this report and if it does show those figures, I will state that it represents a sum largely in excess of the money expended on this plant.

In answer to the 10th. cross-int. the witness testified as follows:

I am unable to state what sum of money was expended without having the books before me.

In answer to the 11th cross-int. the witness testified as follows:

In reply to this I would say that I could not give these names or figures without reference to the books of the old Vicksburg Water Supply Company.

In answer to the 12th cross int. the witness testified as follows:

I was employed by Samuel R. Bullock & Co. as engineer in charge of construction of the Massillon Ohio, water works.

In answer to the 13th cross int. the witness testified as follows:

I answered that I had not made it.

In answer to the 14th. cross int. the witness testified as follows:

This option if it has not been destroyed, is now filed with my other papers in the storehouse in Cleveland Ohio.

In answer to the 15th. cross-int. the witness testified as follows:

The pumps were old and necessarily expensive in management and to replace these pumps with modern and less expensive ma-

chinery to operate, it would cost probably about $16,000.00. I herewith attach a copy of my report.

In answer to the 16th. cross int. the witness testified as follows:

My recollection is that it was about two million gallons.

In answer to the 17th. cross int. the witness testified as follows:

They did; they were there on the 15th day of August, 1900.

In answer to the 18th. cross-int. the witness testified as follows:

The complaint was made orally.

In answer to the 19th. cross-int. the witness testified as follows:

There was no action taken whatever by the officers of the
326 company in regard to the discharge of sewerage into the Washington Street sewer; but the records of the city of Vicksburg show that the mayor and board of aldermen did pass a resolution forbidding anyone to connect with this sewer and also directing the discontinuance of the connections that had already been made.

In answer to the 20th. cross int. the witness testified as follows:

Yes, I did.

In answer to the 21st. cross int. the witness testified as follows:

It was not a matter of commission, but simply I was trying to get control of this property, as I believed it was valuable property at the price named in the options.

CHESTER R. McFARLAND.

Sworn to and subscribed before me, this 11th. day of March, A. D. 1904.

[SEAL.] JESSIE WANCHOPE,
Notary Public for the State of Florida at Large.

My commission expires Nov. 15, A. D. 1906.

Mr. P. M. Harding, chairman and gentlemen of the committee:

In accordance with your instructions, I have made a complete examination of the pumping plant of the Vicksburg Water Works Company. The plant consists of the following:

3 horizontal tubular boilers, each 18 ft. long, 60 in. in diameter, each containing about fifty 4 inch tubes. Said boilers have a capacity of, approximately, 75 horse-power each.

2 duplex compound condensing pumps, each 14-26-12-10 manufactured by the Dean Steam Pump Company, of Holyoke, Mass. Each pump has a separate jet condenser and vacuum pump. These pumps are used to deliver water from the reservoir to the standpipe or pumping direct to the city when the standpipe is cut off.

The pumping plant on the river used for the purpose of taking the water from the river and delivering it to the reservoirs, consists of two duplex pumps, manufactured by Henry R. Worthington, of Brooklyn, N. Y. One is 10-10¼-10 with a rated capacity of 1,197,000 gallons for each 24 hours. The other is a duplex 9-12-10, with rated capacity of 1,640,000 gallons for each 24 hours.

The boilers were designed and built to have a working pressure of 80 # per square inch with a large factor of safety. The Vicksburg Water Supply Company had them inspected and insured by the

Hartford Steam Boiler Inspection & Insurance Company, which allowed a minimum steam pressure of 90 #. The Vicksburg Water Works Company have them now insured in the Ocean, of London, which permits a maximum of 110 # and are working at about 100 #.

The matter I have mentioned to explain some changes which have been made by the present Vicksburg Water Works Company.

327 These boilers were found to be in good condition and of ample capacity to operate the plant.

By the contract with the city, each of the pumps used for delivering the water to the city were to have a capacity of 2,000,000 each in 24 hours. By reason of the low steam pressure (80 #) the water plungers had to be made smaller than intended originally and the pump's speed increased over 40% thereby making it much harder on the machine and more liable to accident when called upon to supply the contract capacity, but the pumps have never failed to run at the required speed when called upon. The plungers and bushings in these pumps had become much worn as they had never been renewed, hence the slippage was anywhere from 10 to 25%. To correct this trouble, the Vicksburg Water Works Company has put into the pump on the south side of engine room (known as # 2 pump) new bushings, and increased the plungers to 14 inches, and thereby reduced the speed of the pump and still retain a capacity of 2,000,000 gallons in 24 hours. And I am informed by the manager that he intends to do the same with the pump on the north side of the engine room at an early date. This is a very commendable thing to do; if they are willing to take the increased risk of lowering the factor of safety of the boilers, and they would seem to be justified in so doing when they can get insurance under such conditions by a reliable boiler insurance company. After making an examination of # 2 pump, I find that the suction deck on the outer end of the right-hand water end has been cracked for some time, and was repaired by the Vicksburg Water Supply Company temporarily, but that such repairs have been in constant use and have seemed to be permanent, and now look as if they might continue so indefinitely; otherwise, I find this pump in good condition, except ordinary wear, and believe it capable of delivering the required amount of water to the city if it can be obtained from reservoir.

Pump # 1 was found to have its plungers and bushings much worn and I doubt if it could deliver the required amount of water, as per contract, but when these parts are renewed, as I am informed by the manager they will be then it can supply the required amount, as per contract. The place is filthy, and I would suggest a liberal use of the article which they supply their consumers reinforced by plenty of soap, as I do not believe it possible to keep machinery in good condition where surrounded by dirt, as no good engineer will permit his place to become in any such condition; and if the company persists in permitting it, the engineer will soon be on a par with the surroundings and bad results will follow, to the detriment of the general public.

The situation at the river is not so satisfactory. The smaller

pump, 10-10¼-10 is the older, but has been reinforced in the last two years with a new water end. Its steam end is in fairly good condition but the plungers are much worn, and while it will supply some water when located near the river, yet will fall much
328 short of the rate capacity. This pump should have new plungers and rods at once the other river pump is in bad condition with plungers and rods much worn and the nuts constantly working loose which hold the plungers in place, causing frequent stoppage of the pump. The steam end of this pump should be renewed also. I am informed by the manager that he has ordered new rods, plungers and bushings for this pump, and has increased the plungers from 12 inches to 13½ inches and thereby increased the capacity of this pump to 2,000,000 gallons for each 24 hours. This change is made on the basis of the increased steam pressure on the boiler, making this change in the size has caused delay in the filling of his order, and he informs me he will get these parts in the early part of January, 1902.

But until such time as these repairs are made, the situation is precarious in the extreme, and I would suggest all haste in making such repairs. I find that the banks of the river have cut away at the base somewhat during the last high water, and left a very steep bank about 20 feet high, over which the river pumps have to be moved and erected thereon. This bank should be graded down to an easy slope so that if caving should take place during the rise of the river, the pumps would not be so liable to be lost in the river, otherwise, a small cave might precipitate the pump into the river and thereby disable the plant for some days.

If the above recommendations are carried out, then the plant will be able to maintain an ample supply of water for present needs.

The city is growing and the consumption of water is increasing each year, and to insure an ample supply, I would suggest that in addition to the above, the company purchase another 2,000,000 capacity pump for the river, and with the larger of the two now in use, one of them could at all times be connected at the river ready for service and thereby comply with the contract as implied as to capacity, and by holding the 10-10¼-10 in reserve, it would make the matter of supply one without question. The cost of the suggested improvements need not exceed the sum of $1500.00.

In regard to the failure of supply in the part, I learn that an attempt was made to use the 9-12-10 Worthington pump to draw water through the old 12 inch suctions into the deep well in the house. This must necessarily fail in the present condition of the suction pipes as it did. And while this experiment was being made, the small pump being in bad repair, failed to supply the necessary water to supply the city, and when the change was made back again to the river, there was a great demand by reason of the former lack of water and this was at once followed by an unprecedented cold wave in this country, and many people wasted water rather than take the trouble to shut off at the stop and waste, hence the partially disabled river pumps were unable to catch up with the demand. This, of

course, was all caused by the company doing that which it
329 should not have done, which was the taking of a part of the machinery to make an experiment, and can all be stated in a few words, which are, gross mismanagement.

Hoping these recommendations may meet your hearty approval, I am,

Yours respectfully,

CHESTER R. McFARLAND,
Consulting Engineer.

Vicksburg, Miss., Dec. 28th, 1901.

Summary.

GENTLEMEN: The following summary is taken from the report in detail that you may have same for ready reference:

First. Have new piston rods and plungers put into both river pumps at once, and in so doing if the Vicksburg Water Works Co. desires to change the plungers in the 9-12-10 pump to 13½ no objections need be raised if they will continue to carry 100 # steam during low water in the river.

Second. Renew the steam end of the 9-12-10 pump at an early date.

Third. Have river bank graded to a reasonable slope so that the danger of the pumps being carried into the river by caving of the banks may be reduced to a minimum. This should be done at once before the rise in the river makes it impossible.

Fourth. Have new plungers and bushings put into No. 1 pump used for pumping from reservoir to city.

Fifth. Purchase for use at the river a new pump with a capacity of 2,000,000 gallons in 24 hours, and then always keep either the 9-12-10 or the new pump connected up ready for service; or, in other words, keep them both connected up ready for service, at all times, and never move but one at a time.

If these recommendations are faithfully carried out, Vicksburg will not again be without an ample supply of water for some time to come.

I would also suggest that the place be cleaned up, and kept in that condition.

Yours respectfully,

—— ——.

The above and foregoing has the following indorsement thereon, to-wit: #41 Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Chester R. McFarland, witness for defendant.—Filed March 15, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

330 *Deposition of J. J. Hayes.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Mr. J. J. Hayes, of Vicksburg, Mississippi, to the following interrogatories and cross interrogatories when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence, subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words and figures, to-wit:

"Sworn to and subscribed before me, this the — day of ——," and signed by the officer with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.
HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you were an alderman in the city of Vicksburg during the years of 1899 and 1900?

Int. 3. State whether or not you took any part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and aldermen of the city of Vicksburg to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and if you state that you did, state what part you took in the same, and state whether or not you were acting in your capacity as aldermen, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you known whether or not Mr. Chester R. McFarland, while he was superintendent and manager of said
331 water works in the city of Vicksburg, took any part in the passage of said bill if you state that he did, state exactly what

action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor & aldermen of Vicksburg, and if so, at what price was said system of waterworks offered for sale to the said mayor and aldermen, and how long said offer was open for acceptance.

Int. 7. State, if you know, whether or not there was any scheme or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge and the price at which it was sought to dispose of said system of water works, to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company and the mayor and aldermen of Vicksburg, at any time prior to August 1900, in regard to the service being rendered by the Vicksburg Water Supply Company, and if you state that there was, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint either upon the part of the mayor and aldermen, of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnished to said mayor and aldermen or to the inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

Int. 10. State, if you know, whether the Vicksburg Water Supply Company while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city?

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works system at any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as you can how often it so failed, and for how long a period of time in each instance was the said plant closed down or so failed to furnish water?

Int. 12. State as fully as you can what has been the character of the service rendered by the Vicksburg Water Works Company since it became the owner of said Vicksburg water works system.

Int. 13. State as near as you can how often the plant has been closed down since August 1900, and for what length of time in each instance.

Int. 14. State whether, or not, since August, 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said company has been sufficient, and if you state that it has at
332 any time been insufficient, state as fully as you can how often you have known it to be so and the extent of insufficiency,

and for how long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of water hydrants, that from and after August, 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state you were present, state whether or not you voted for said resolution, and if so, why you voted for the same?

Int. 17. State if you know, whether or not the passage of said resolution was in pursuance of a scheme to force said water works company to sell to defendant its waterworks system in the said city of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city under its said contract, or to unlawfully endeavor to disable said company from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 20. State, if you know, whether the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of any inflammatory articles against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers, and agents and confederates of the city of Vicksburg against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy inflammatory and untruthful articles were written and published in and by the newspapers in said city of Vicksburg or any of them in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission for the offal and excrement from water closets and other sewerage
333 to be emptied into and through the sewer under Washington street in the said city of Vicksburg?

Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers or agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said

water supply company did have such knowledge, state whether or not the said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what waterclosets were so connected with said sewer and discharged into and through the same?

Int. 26. State, if you know, whether any closets or buildings were connected with said sewer and discharged into and through the same, other than those which received from the mayor and aldermen of said city of Vicksburg, such permits, and if you state that they were, state if the said Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did state how you know it had such knowledge?

Int. 27. State, if you know, whether or not the Vicksburg Water Supply Company had full knowledge in each and every instance of every building or water closet therein being connected with said sewer, and discharging offal and excrement into and through the same, and whether or not the said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active co-operation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company, or the Vicksburg Water Works Company.

Int. 29. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, on the matters in question in this cause. If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

Answers of J. J. Hayes to Interrogatories.

Ans. 1. J. J. Hayes, over the age of 21 years, Vicksburg, Miss., general merchant.

Ans. 2. Yes, sir.

Ans. 3. I did, I was acting in the capacity as alderman.

Ans. 4. I do not remember what part I took in it. The
334 main purpose was to have the bill passed so that the city could acquire water works and build a sewerage system.

Ans. 5. I was chairman of the waterworks committee, of the board of mayor and aldermen of the city of Vicksburg, and as such had frequent conversations with Mr. McFarland, who was then supt. of the water works company, both in reference to the passage of the bill, and to the purchase of the waterworks plant from the First National Bank, of New York, and as a result of my conferences with

Mr. McFarland, I might say at his suggestion, I offered a resolution in the board of mayor and aldermen that we get an option for the purchase of the water works from the First National Bank of New York, but the other members of the board did not think it was necessary to get it at that time, so the matter was dropped. Mr. McFarland was cognizant of all these facts.

Ans. 6. The owners direct, that this, the First National Bank of New York, did not make any offer to the board of mayor and aldermen to sell said waterworks, but Mr. McFarland, the then supt. told us it was for sale, and indicated a figure considerably under the $150,000, and that we could get it at any time we desired to purchase it at a figure under $150,000.

Ans. 7. I never knew of any scheme in that regard.

Ans. 8. None at all.

Ans. 9. I don't know of any complaint with the exception that we always did have as to muddy water at the season of the year when the Mississippi river was high. That complaint existed from the day the water works commenced to furnish water until lately.

Ans. 10. To the best of my recollection, I did.

Ans. 11. I don't remember of a single instance, but I understand one time while I was away from here there was one break down that lasted for a few days.

Ans. 12. When the water works company first took charge of it we had some low pressure, and the water supplied was not as good as before I learned it was caused by the engineer of the plant being changed and a new engineer placed in charge who did not give as good results as the former one. Frequently after that we had complaints from the citizens in general in reference to the company not giving as good a supply of water as they had been before, while I was a member of the board. What the cause of it was I cannot exactly say, there was a considerable lack of pressure which brought in muddy water especially in the more distant districts, particulars Speed's addition, from where we had a number of complaints.

Ans. 13. I cannot say exactly, but I know it has been closed down a number of times, though how long at a time, I cannot state definitely, I think for over 24 hours. I know it has been closed down in one instance, for as much as 2 or three days, somewhere along there in the neighborhood of 2 days.

Ans. 14. I can only answer this in the most general way. I do know that there was considerable complaint about low pressure, and I know that at my house on one or more occasions the press-
335 ure was exceedingly low, but just how often and for how long a period of time in each instance, I don't remember.

Ans. 15. Yes, sir. I was.

Ans. 16. I simply voted for it to test the matter as to whether there was a contract or not, and not in any way to harass the water works company. I was very friendly with the water works company while I was a member of the board, and was not in favor of any corporation being jumped on simply because it was a corporation, or was being managed by strangers. I wanted to decide the question whether or not a contract existed between the city and the water-

works company. This resolution was passed after we had a consultation with Mr. Crumpler in Mr. Hudson's office in which he offered to build a sewerage system and sell the water works to the city of Vicksburg, for the amount of the bonds, for $300,000 however, there was a proviso in that connection, that the sewerage system was not to exceed a specified amount which offer we did not act on at all as a board. That was an informal meeting in Mr. Hudson's office. I don't remember the date, but my recollection is that it was on a Saturday afternoon shortly after the passage of the resolution. The resolution had no reference whatever to the purchase of the waterworks.

Ans. 17. To my knowledge there was no scheme on the part of the city to force the waterworks company to sell to the city of Vicksburg, but as I said before, it was simply to test the question of whether or not there was any valid contract between the city and the water works company.

Ans. 18. None that I know of. I never heard of any conspiracy or scheme against the water works company or talk to that effect.

Ans. 19. The board of mayor & aldermen had an act drafted by the city attorney and set out to the legislature for passage, and its purpose is as clearly shown by the face of it as I can state.

Ans. 20. There was no desire whatever to coerce the water works company on the contrary, the passage of the act was procured for the purpose of building a sewerage system and buying water works and the bonds to be issued, and sold for the purchase of the water works was largely in excess of what we understood it was then being offered for sale.

Ans. 21. So far as I know, neither the mayor nor the aldermen procured the publication of any articles of any sort in regard to the water works company, and for my own part, I know positively I did not.

Ans. 22. No such conspiracy existed.

Ans. 23. I remember one instance that such permission was given, and that was for the St. Xavier's college, and I voted against permission in that instance.

Ans. 24. I do not remember whether we ever gave notice to the water company that permission had been given or not to have sewerage from water closets discharged into the Washington St. sewer, but I do know that we never heard any complaint from Mr.
336 McFarland, or anyone else connected with the water works company in regard to the use of this sewer for such purpose, and I was chairman of the water works committee of the board of mayor and aldermen, and if any protest had been made it would naturally have come through me.

Int. 25. The water supply company furnished the water and had a record of exactly what closets they would furnish water to, but whether they had a record of where the closets emptied I do not know. The water was put into the closets, either by the water works company, or its agents, and the city gave no authority, so far as I know, except in the instance mentioned above.

Ans. 26. This question is answered by my answers to Nos. 24 and 25.

Ans. 27. The water works company must have known and consented to this because the board of mayor & aldermen knew nothing of it in a great majority of the cases.

Ans. 28. Certainly not.

Ans. 29. In answer to this question I will say that I always considered it for the best interest of the city to help along all of the corporations, and to that end I have always favored the water works company, when I could do so consistently, and never at any time did I do anything to injure the said company.

J. J. HAYES.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, authority, —— ——, who swore to the correctness of his answers to the foregoing interrogatories above set forth and stated and subscribed to the same on this the 19th day of March, 1904.

J. H. SHORT,
U. S. Commissioner.

[SEAL.]

The above and foregoing has the following indorsement thereon to-wit:—#41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Deposition of J. J. Hayes,—Filed 3/21/04. L. B. Moseley, clerk, J. H. Short, D. C.

Deposition of D. A. Campbell.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Capt. D. A. Campbell of Vicksburg, Mississippi, to the following interrogatories and cross in-
337 terrogatories when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words, and figures, to wit: "Sworn to and subscribed before me this— day of

——," and signed by the officer, with the proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY &
O. W. CATCHINGS, *For Def'd't.*
HUDSON & FOX &
SMITH, HIRSH & LANDAU,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you are a member of the board of mayor and aldermen of the city of Vicksburg, and if you state that you are, state when you were first elected a member of said board, and when you were sworn in and assumed the duties of said office, and whether or not you have since said date continually filled said office.

Int. 3. State whether or not you took any part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and aldermen of the city of Vicksburg, to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and if you state that you did, state what part you took in the same, and state whether or not you were acting in your capacity as alderman, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you know, whether or not Chester R. McFarland while he was superintendent and manager of said waterworks in the city of Vicksburg, took any part in the passage of said bill, if you state that he did, state exactly what action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor and aldermen of Vicksburg, and if so, at what price said system of waterworks — offered for sale to the said mayor and aldermen and how long was said offer open for acceptance.

Int. 7. State, if you know, whether or not there was any
338 scheme or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge, and the price at which it was sought to dispose of said system of water works to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company, and the mayor and aldermen of Vicksburg at any time prior to August, 1900, in regard to the service being rendered by the Vicksburg Water Supply Com-

pany, and if you state that there was, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint either upon the part of the mayor & aldermen of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnished to said mayor and aldermen, or to the inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

Int. 10. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city.

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works system, at any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as you can how often it so failed, and for how long a period of time in each instance was the said plant closed down, or so failed to furnish water.

Int. 12. State as fully as you can what has been the character of the service rendered by the Vicksburg Water Works Company since it became the owner of said Vicksburg water works system.

Int. 13. State, as near as you can, how often the plant has been closed down since August, 1900, and for what length of time in each instance.

Int. 14. State whether or not, since August 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said company has been sufficient, and if you state that it has, at any time, been insufficient, state as fully as you can how often you have known it to be so and to what extent of insufficiency, and for how long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract
339 for the use of water hydrants, but from and after August 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state that you were present, state whether or not you voted for said resolution, and if so, why you voted for the same.

Int. 17. State, if you know, whether or not the passage of said resolution was in pursuance of a scheme to force said water works company to sell to defendant its water works system in the said city of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City

of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city, under its said contract, or to unlawfully endeavor to disable said company, from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 19. State, if you know, whether the defendant procured the passage of the act of March 7th, 1900, authorizing the city of Vicksburg to issue bonds and purchase or construct a water works system, and if you state that the defendant did do any thing to procure the passage of said act, state exactly what was done by the defendant with that end in view?

Int. 20. State, if you know, whether or not the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of any inflammatory articles against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers and agents and confederates of the city of Vicksburg, against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy, inflammatory and untruthful articles were written and published in and by the newspapers in said city of Vicksburg or any of them, in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission for the offal and excrement from water closets and other sewerage, to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers and agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said
340 water supply company did have such knowledge, state whether or not said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what water closets were so connected with said sewer and discharged into and through the same.

Int. 26. State, if you know, whether any closets or buildings were connected with the said sewer and discharged into and through the same other than those which received from the mayor and aldermen of said city of Vicksburg such permits, and if you state that they were, state if the same Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did, state how you know it had such knowledge.

Int. 27. State, if you know, whether or not the Vicksburg Water

Supply Company had full knowledge in each and every instance of every building or watercloset therein being connected with said sewer, and discharging offal and excrement into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active co-operation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company or the Vicksburg Water Works Company.

Int. 29. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

Answers of Capt. D. A. Campbell to Interrogatories.

Ans. Int. 1. My name is D. A. Campbell, age 61 years, residence Vicksburg and my occupation is a clerk.

Ans. Int. 2. I am a member of the board of mayor & aldermen of the city of Vicksburg, was elected in Dec. 1892 for 2 years; was sworn in the following January, and then assumed the office; was again elected in Dec. 1899, sworn in the following January, and have since that time continuously filled the office.

Ans. Int. 3. During the term of 1899 and 1900, I participated in my official capacity with the board of mayor & aldermen in asking
the legislature to authorize the city of Vicksburg to issue
341 bonds for the sum of $150,000 to purchase or construct a waterworks plant in the said city.

Ans. Int. 4. I wanted the bill passed because I had reasons to believe that the water works company then in Vicksburg would be for sale, and I wanted the city to own it. In conjunction with this bill the board of mayor & aldermen also asked authority to issue bonds for $150,000 to construct a sewerage system. I advocated that the bill bind the city to the ownership of its own waterworks before building sewerage, and with this condition the bill or petition went to the legislature.

Ans. Int. 5. From conversation with Mr. McFarland, who was then manager of the water works, I was convinced that the plant could be bought and for less than $150,000. Mr. McFarland wanted the city to own the water works, and I have reason to believe actively interested himself for the city in the passage of said bill.

Ans. Int. 6. I do not remember that any positive offer was made to sell the water works to the city.

Ans. Int 7. Before the close of the legislative session of 1900, and after it was known that the legislature had authorized the issuance of said bonds to purchase the water works, Mr. S. S. Hudson requested an informal meeting of the board of mayor & aldermen at his office. The announcement of his ownership of the water works was a surprise and a disappointment to me. After getting us together he told us that he represented parties who had purchased the water works and he wanted to talk with us about it, the question of selling to the city came up. Mr. Hudson said the $150,000 was hardly an inducement for the water works alone but if we would give them the building of the sewerage, and when the sewerage was completed turn over to them the whole $300,000 for the waterworks and the building of the sewerage they would consider the proposition. After this I think there was some correspondence between Mr. Hudson and the mayor.

Ans. Int. 8. Prior to August, 1900, there was no official disagreement between the Vicksburg Water Supply Company and the board of mayor & aldermen, that I can remember.

Ans. Int. 9. Unofficially there was constant complaint of the character of water furnished. It was muddy and unfit for bathing, washing and laundry purposes. The inhabitants of the city who used the water complained that the contract to furnish good and wholesome water was badly violated, but no test of such violation was made.

Ans. Int. 10. With one or two exceptions, when the river was choked up with ice, &c., the supply of water for fire protection, flushing &c. was ample, and there was no complaint of want of pressure.

Ans. Int. 11. As far as I know there was no failure on the part of the Vicksburg Water Supply Company to furnish water either to the city or to the inhabitants, except once or twice for a short period.

Ans. Int. 12. Since the Vicksburg Water Works Company
342 became owners of the plant, the service from the beginning has been very unsatisfactory. The company itself complained that there was a waste of water, and then the city fire department complained that there was frequent want of pressure. In order to guard against this weakening in supply, and to note exact time &c. the city was forced to put water gauges at the engine houses, something that was never needed or suggested under the management of the old company. The public water troughs or fountains under my supervision as chairman of the city's water committee have been exceedingly unsatisfactory. Frequently without a sufficient supply. In this connection the water company claims the city must keep these troughs, or fountains, cleaned out and in repair, lack of supply force in my judgment frequently contributed to their getting dirty. The Vicksburg Water Works Company claimed protection under its contract against the public use of the troughs or fountains for drinking purposes by poor people in dry times. Under the old company I never heard of this, the water being altogether waste. The Vicksburg Water Works Company demanded protection, that

property owners near the public troughs or fountains could be coerced into building cisterns or do the more economical thing of getting water from the said company. It further protested and sought an ordinance from the city to prohibit contractors &c. from using waste water in the street gutters. If further asked the city through its board of mayor & aldermen to pass an ordinance prohibiting the company's individual contractors from intentionally or negligently using excessive water in his or her private premises. The board of mayor & aldermen granted protection when asked for.

Ans. Int. 13. Since August, 1900, the plant has been closed down a number of times. At one time for weeks approximately closely on to the limit of their contract. During this time, however, the limit for 20 # pressure was protected inside of every two weeks. The city sought to know the reasons for this suspense at one time, and was refused by the owners of the water works.

Ans. Int. 14. For most of the time since August, 1900, there has been sufficient supply of water for fire protection, but the sinking of pressure at different times, and without notification from the water company, has kept the fire department in a state of anxiety and unrest. Chief Wilkes has frequently expressed uneasiness to me. I have not kept up with it sufficiently to give time and dates.

Ans. Int. 15. I voted for said resolution.

Ans. Int. 16. I was present and voted for said resolution, and as to my reasons for voting for the same, I would say that the board of mayor & aldermen considered that the service which was being rendered by Mr. Crumpler, under the new management, was exceedingly bad, and the question was raised as to whether or not the water works company had not forfeited its contract with the city.

The board sought legal advice upon this question, and were
343 advised that the water works company had forfeited its contract with the city, and it was to raise this question that the foregoing resolution was passed by the board and for no other purpose.

Ans. Int. 17. The real purpose of said resolution as I understand it is stated in my answer to Int. 16. There was no scheme to force the city to sell. We merely sought to test the question of whether or not the water works company had violated its contract so as to forfeit the same.

Ans. Int. 18. I can state positively that there was not.

Ans. Int. 19. I have already stated fully what was done by the city in reference to the passage of this act.

Ans. Int. 20. I can state positively that the city in advocating the passage of said act had no such purpose. In fact we knew nothing of the Vicksburg Water Works Company, or of the persons who now own the stock in said company. My answer to a former interrogatory in answer to Mr. Hudson's proposition to sell to us states the first knowledge that the city had so far as I know in reference to Mr. Crumpler and the Vicksburg Water Works Company. Before then we had been dealing with Mr. McFarland who was the supt. and manager of the Vicksburg Water Supply Company.

Ans. Int. 21. No, sir.

Ans. Int. 22. There was nothing of the sort.

Ans. Int. 23. I remember only one instance in which permission was given by the board, but the connections were made with the tacit knowledge and consent of the board in so far as it took no steps to prevent such connections.

Ans. Int. 24. I know nothing about the knowledge of the Vicksburg Water Supply Company as to this except that it had to furnish the water used in each and every instance.

Ans. Int. 25. They had a better opportunity than the city had because they furnished the water.

Ans. Int. 26. There were connections made that the city has no knowledge of, but I do not know what knowledge that the water supply company had of the same.

Ans. Int. 27. I cannot speak definitely as to the knowledge of the water works company in this matter, but certainly it has a better opportunity of knowing than the city as it was required to furnish the water to be used in each instance.

Ans. Int. 28. I cannot see how such consent could have been made for the offal and excrement to be emptied into said sewer except by the knowledge of the water works company.

Ans. Int. 29. I know of nothing else that I consider of benefit or advantage to the parties as issue in this cause, or either of them, or that I consider material to the subject of this examination or the matters in question in this cause.

D. A. CAMPBELL.

344 STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, U. S. commissioner of the United States Circuit and district courts, in and for the western division of the southern district of the State of Mississippi, Capt. D. A. Campbell, who after being by me duly sworn, states that the foregoing answers made by him in answer to interrogatories from 1 to 29 inclusive are true and correct as stated, and that the said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

Witness my hand and official seal, this 4th day of May, 1904.

J. H. SHORT,

[SEAL.] *U. S. Com'r.*

The above and foregoing has the following indorsement thereon, to-wit: #41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Deposition of D. A. Campbell.—Filed May 4/04. L. B. Moseley, clerk. J. H. Short, D. C.—Bryson & Dabney.

Deposition of Chas. Schuler.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Chas. Schuler, of Vicksburg Mississippi, to the following interrogatories and cross-interrogatories when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause as evidence, subject only to objections for irrelevancy and incompetency, notice, commission and all other matters of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words and figures to-wit:

"Sworn to and subscribed before me this the — day of ——" and signed by the officer with proper dates filled in the blanks above shown.

HUDSON & FOX.
SMITH, HIRSH & LANDAU.
W. J. VOLLOR.

BRUSON & DABNEY.
O. W. CATCHINGS.

345 *Direct Interrogatories Propounded by Defendant.*

Interrogatory 1. State your name, age, place of residence and business.

Int. 2. State in what business you were employed from August 1900 to January 1903.

Int. 3. If you state that you are now, or at any time since August 1900, have been employed in the fire department of the city of Vicksburg, Mississippi, state what position you held in said fire department.

Int. 4. State if you were present at the fire at the north east corner of Jackson and Cherry streets which occurred about the — day of ——.

Int. 5. State if you were present when the Lee Richardson residence on Cherry street was partially consumed by fire about the — day of ——.

Int. 6. State if you were present at the fire on Pearl street near the Advance Gin & Mill Co. about the — day of ——.

Int. 7. State whether or not you were present at what is known as the Mulligan fire on Mulberry street about the — day of ——.

Int. 8. State, if you know, whether or not at the above named fires the firemen opened the valves in the hydrants so as to turn on the full pressure of the water.

Int. 9. State, if you know, what particular person or individual opened the valves of these several hydrants, and if you do know what person or persons opened said valves, state whether or not he was experienced as a fireman, and knew how to open the said valves, and when the same were fully opened so as to turn on all of the pressure possible.

Int. 10. State, if you know the extent of the pressure at these several fires, and whether or not it was adequate and sufficient to enable the fire department to properly fight the said fires to the best advantage.

Int. 11. State whether or not you have attended any other fires since August, 1900, and if you state that you have, state what was the condition of the waterworks system as to the pressure and whether or not the same was adequate and such as to enable the fire department to work to advantage in extinguishing said fires.

Int. 12. If you state that at any time or at any particular fire you found the pressure insufficient or inadequate state as fully as you can the actual conditions as to the extent of the pressure, as to how it compared with the pressure at other times, and as definitely as you can the number of pounds of pressure per square inch upon the water in the hydrants where the same was connected with the fire hose.

Int. 13. State, if you know, whether or not any officer or agent or employé of the water works company called the attention of the fire department or any member of the same, to the fact that the
346 valve in the hydrant had not been sufficiently opened to turn on the full pressure of the water, and if you state that such agent, officer or employé did so call the attention of the fire department to said valve not being fully open, state when and where such notice was given, and whether or not it was a fact true, and explain as fully as you can the actual condition and fact pertaining to the same.

Int. 14. If you know, state if you at any time observed the supply of water in the hydrants to be insufficient and inadequate for the extinguishing of fires and not sufficient pressure for that purpose.

Int. 15. State when and where you so observed it and for how long a period of time continuously did you observe it to be so inadequate and insufficient both as to quality and pressure.

Int. 16. State whether or not the fire department of the city of Vicksburg maintains at the engine house on Crawford street, in said city a pressure gauge which indicates the pressure of the water in the water works mains at the elevation of the gauge in said engine house, and if you state that said gauge is, or has been so kept and maintained, state whether or not a record of its readings has been preserved and who has had charge of the said gauge since it was so set up.

Int. 17. State if you know, whether the readings of said gauge have been correct and properly indicated the pressure of the water in the mains from the water works company.

Int. 18. State, if you know, whether or not the said gauge is connected with the mains of the water works company by a valve or valves so that it can be shut off from said water works mains, and if you state that it is, or has been so connected, state whether or not the said valve or valves was at all time kept fully opened so as to indicate the full and complete pressure of the water in the water-works mains at all times.

Int. 19. State, if you know, whether or not Mr. M. O. Crumpler, at any time examined the said gauge, and contended that the valve or valves connecting the same with the water works mains was turned off so as to cut part of the pressure, and that by reason thereof the gauge was not indicating the true and correct pressure of the water in the water works mains.

Int. 20. If you state that he did state fully the circumstances at the time the said Crumpler so appeared, and state fully whether or not as a matter of fact the valve or valves so connecting the said gauge with the mains was turned so as to shut off part of the pressure, and if you state that it was, state why it was turned and who turned the same in such position and what was the purpose, if you know in so turning the said valve.

Int. 21. If the said Crumpler appeared more than once to examine the said valve, give the particulars at each time, and all of the facts pertaining to the same.

Int. 22. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at
347 issue, in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the *the* same fully and at large in your answer.

Ans. Int. 1. Chas. Schuler, I am 26 years of age. My place of residence is # 604 N. Walnut street. I am at present and have been for some years past, engaged in the fire department of the city of Vicksburg.

Ans. Int. 2. I was employed as at present in the fire department of the city of Vicksburg.

Ans. Int. 3. At first I was a driver, but for the past 2 years or longer, I have been assistant chief.

Ans. Int. 4. I was present.

Ans. Int. 5. Yes, sir.

Ans. Int. 6. Yes, sir.

Ans. Int. 7. Yes, sir.

Ans. Int. 8. I know of only one fact where the hydrant was not opened so as to turn on full pressure. That was the Tom Morrisey fire near the Advance gin. At all of the others the water was turned on to its full pressure. At the Jackson street fire I went around to all of the plugs myself, and saw that they were turned on so as to give full pressure.

Ans. Int. 9. At the Lee Richardson fire one of the plugs was

opened by old man Andy Conner. He is an experienced fireman, and had been in the fire department for at least 20 years. He is now dead. The other plug used at the Richardson fire was opened by Jimmie Williams. I do not know exactly how long he had been employed in the fire department, but at least 2 or three years and was an experienced fireman.

Ans. Int. 10. At the fire corner of Jackson & Cherry streets, while the pressure still was not as good as it was at times, I think it was sufficient if we could have gotten to the fire. I was in charge of a line of hose consisting of only about 3 links or 150 feet, and my stream was fairly good, but the other streams came through longer lines of hose, probably some of them as much as 5 or 6 hundred feet, and in those the pressure was quite insufficient. There were 6 streams, I believe, at this fire, and mine, being the only short line of hose, was the only one that had anything like sufficient pressure.

At the Richardson fire I was at breakfast when the alarm was sent in and I got there a little late. I was in charge of a line of hose connected with the plug on the corner of Cherry St. and Shannons alley. I climbed up on the top of a first story balcony, and handled the hose myself, and the pressure was not sufficient to raise the water to the point of the fire which was between the ceiling at the top of the second story, and the roof. I afterwards put Jimmie Williams in charge of the line of hose, and I went back to see if the water was turned on so as to give full pressure and I found that it was. I returned and took charge of the hose myself, and found the
348 pressure still quite insufficient. Some time shortly afterwards the pressure was improved but not until considerable damage had been caused to the building.

Ans. Int. 11. There was some fires where there was no pressure, I remember one on Farmer and Clay streets, at Mr. R. E. Walne's. We succeeded in putting the fire out without the use of water, but there was absolutely no pressure on. Another fire was reported back of Slaughter's hall, in the same locality, where there was no pressure, and the engine had to be used, but I was not at that fire.

Ans. Int. 12. I have answered this question as definitely as I can in answer to the foregoing interrogatories.

Ans. Int. 13. I know of no such notice. If any agent or employé of the water works company ever at any time, notified the fire department that the water was not turned on so as to give the full pressure I have never heard of it, and certainly no one ever did so in my presence.

Ans. Int. 14. I cannot give the exact dates but on a number of occasions we have found the pressure of water quite insufficient, and frequently no pressure at all at the Washington engine house where our gauge is kept. I can give you the number of times when the fire alarms were sent in and the engines were ordered out and herewith attach as Exhibit "A" to this deposition memoranda giving the several dates. The fire engines were never ordered out except when the pressure was insufficient.

Ans. Int. 15. I cannot give the exact dates, but on one or more occasions we have been 2 or 4 days without water, and on quite a

number of occasions we have found the pressure insufficient for fire protection.

Ans. Int. 16. The fire department maintained a pressure gauge at the Washington engine house on Crawford street, and has maintained it since some time in the fall or winter of 1900--'02, shortly after Mr. Crumpler took charge of the waterworks plant. I think it was about Jan'y 1902.

Ans. Int. 17. I would say that the gauge readings have been about correct, but I am satisfied that the gauge shows more pressure than we actually have.

Ans. Int. 18. I had the first 5 or 6 months after it was set up. In fact I set it up myself, except as to the plumbing work. Printed instructions as to how it was to be set up, and kept were sent along with the gauge, and I followed these instructions absolutely in maintaining the same. The instructions required that the valve turning pressure of the water on to the gauge be turned to such a point as to steady the needle. To do so I found that I could not leave the valve wide open. When I opened the valve wide the needle vibrated so as to make a broad line. In fact it was nothing but a blot or blur on the paper sometimes 3/8 of an inch wide. If we read from the outside of this blurred line, it would indicate a difference in pressure of nearly 20 pounds from a reading taken from
349 the inside of the line. When the needle was steady, it would give a reading somewhere between the readings indicated by the outside of the blurred line, and the inside of the same, that is to say, if I turned the valve so as to steady the needle the pressure indicated by the gauge would be just about midway between the reading indicated by the outside and inside of the blurred line. The outside of the blurred line would read about 10 # more pressure than the steady line, and the inside would read about 10 # less pressure. I attach hereto as Exhibit "B" my deposition, disks or sheets showing the readings of the gauge when the valve was open and when it was partially closed so as to steady the needle, the wide line being the reading when the valve was open, and the narrow line being the reading when the valve was partially closed. It required a very slight change in the valve to steady the needle. I do not think any pressure whatever was taken off by turning the valve so as to steady the needle.

Ans. Int. 19. I understand that Mr. Crumpler came up to the engine house and examined this gauge at least once while I had charge of the same. I had gone home to dinner and when I got back I found the value was turned so as to make the broad line indicated on the sheets attached as exhibit to my answer to question 18. I then went down to see the gauge kept by Mr. Crumpler, and to see how his was operated, and whether or not it made the same broad line as the city's and I found that his guage was regulated just as I had had mine regulated before he changed it. I reported the matter to the fire chief, Mr. Marks, but he told me to let the gauge alone, and let it read just as Mr. Crumpler had fixed it. Since then the valve to the city's gauge has been kept fully opened.

Ans. Int. 20. In answer to this interrogatory, I would say that the

valve on the city's pressure gauge has never been turned so as to shut off any part of the pressure. In turning it so as to steady the needle as required by the printed instructions which came with the gauge such slight change was required that I do not think it affected the pressure in the least. I know that no appreciable part of the opening which permitted the water to reach the gauge was closed. It was just turned enough to prevent vibration and the pounding of the water caused by the pumping.

Ans. Int. 21. If Mr. Crumpler ever came about the gauge but the one time I do not know. I know that from that time on the gauge was kept just as he requested.

Ans. Int. 22. I can think of nothing else at present that I consider of advantage or benefit to the parties at issue, in this cause, or either of them or that I consider material to the subject of this examination, or the matters in question in this cause.

C. SCHULER.

350 STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, U. S. commissioner of the United States circuit and district courts, in and for the western division of the southern district of Mississippi, Chas. Schuler, who after being by me duly sworn, states that the foregoing answers made by him to interrogatories from 1 to 22 inclusive, are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter in the foregoing interrogatories.

Witness my hand and official seal, this the 4th day of May, 1904.

J. H. SHORT,
U. S. Com'r.

[SEAL.]

The above and foregoing has the following indorsement thereon, to-wit:—#41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the city of Vicksburg. Deposition of Chas. Schuler. Filed May 4/04. L. B. Moseley, clerk. J. H. Short, D. C.

Deposition of W. O. Smith.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Mr. W. O. Smith of Vicksburg, Mississippi, to the following interrogatories and cross interrogatories, when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the

above entitled cause, as evidence subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words, and figures, to-wit: "Sworn to and subscribed before me this — day of ——," and signed by the officer, with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
HUDSON & FOX,
For Complainant.

351 *Direct Interrogatories Propounded by Defendant.*

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you are a member of the board of mayor and aldermen of the city of Vicksburg, and if you state that you are, state when you were first elected a member of said board, and when you were sworn in and assumed the duties of said office, and whether or not you have since said date continually filled said office.

Int. 3. State whether or not you took any part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and aldermen of the city of Vicksburg to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and if you state that you did, state what part you took in the same, and state whether or not you were acting in your capacity as alderman, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you know, whether or not Chester R. McFarland while he was superintendent and manager of said waterworks in the city of Vicksburg, took any part in the passage of said bill, if you state that he did, state exactly what action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor and aldermen of Vicksburg, and if so, at what price said system of waterworks offered for sale to the said mayor and aldermen and how long was said offer open for acceptance.

Int. 7. State, if you know, whether or not there was any scheme or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge, and the price at which it was sought to dispose of said system of water works to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company and the mayor and aldermen of Vicksburg at any time prior to August, 1900, in regard to the service being rendered by the Vicksburg Water Supply Company, and if you state that there was, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint either upon the part of the mayor and aldermen of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnished to said mayor and aldermen, or
352 to the inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

Int. 10. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city.

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works system, at any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as you can how often it so failed, and for how long a period of time in each instance was the said plant closed down, or so failed to furnish water.

Int. 12. State as fully as you can what has been the character of the service rendered by the Vicksburg Water Works Company since it became the owner of said Vicksburg water works system.

Int. 13. State, as near as you can, how often the plant has been closed down since August, 1900, and for what length of time in each instance.

Int. 14. State whether or not, since August 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said company has been sufficient, and if you state that it has, at any time, been insufficient, state as fully as you can how often you have known it to be so and to what extent of insufficiency, and for how long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of water hydrants, but from and after August 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state that you were present, state whether or not you voted for said resolution, and if so, why you voted for the same.

—. 17. State, if you know, whether or not the passage of said resolution was in pursuance of a scheme to force said water works company to sell to defendant its water works system in the said city

of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city, under its said contract, or to unlawfully endeavor
353 to disable said company, from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 19. State, if you know, whether the defendant procured the passage of the act of March 7th, 1900, authorizing the city of Vicksburg to issue bonds and purchase or construct a water works system, and if you state that the defendant did do anything to procure the passage of said act, state exactly what was done by the defendant with that end in view?

Int. 20. State, if you know, whether or not the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of an inflammatory article against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers and agents and confederates of the city of Vicksburg, against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy, inflammatory and untruthful articles were written and published in and by the newspapers in said city of Vicksburg or any of them, in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission for the offal and excrement from water closets and other sewerage, to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers and agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said water supply company did have such knowledge, state whether or not said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what water closets were so connected with said sewer and discharged into and through the same.

Int. 26. State, if you know, whether any closets or buildings were connected with the said sewer and discharged into and through the same other than those which received from the mayor and alder-

men of said city of Vicksburg such permits, and if you state that they were, state if the same Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did, state how you know it had such knowledge.

Int. 27. State, if you know, whether or not the Vicksburg Water Supply Company had full knowledge in each and every instance of every building or watercloset therein being connected with
354 said sewer, and discharging offal and excrement into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active co-operation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company or the Vicksburg Water Works Company.

Int. 29. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in qustion in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

Answers of W. O. Smith to Interrogatories.

Ans. 1. W. O. Smith, over the age of 21 years, residence of Vicksburg, Miss.

Ans. 2. I do not remember when I was first elected, but some time about 1890, and I have served continuously since then with the exception of two terms, or 2 years each, one of which included the years 1898 and 1899.

Ans. 3. I was not a member of the board at that time and therefore took no action whatever in procuring the passage through the legislature of the bill mentioned.

Ans. 4. Nothing.

Ans. 5. I do not know.

Ans. 6. The Vicksburg Water Supply Company made no offer to sell, that I know of. The Vicksburg Water Works Company did offer to sell their plant, but what the price was now I can't remember. I thought myself at the time it was too high for the city to purchase, and saw no chance for the city to buy it. I believe said offer was open for acceptance for several weeks.

Ans. 7. I know nothing about any such scheme.

Ans. 8. None that I remember.

Ans. 9. There was always a complaint of the muddy water, but no complaint as to pressure.

Ans. 10. I think I did.

Ans. 11. I do not remember of any instance in which the water supply company closed down or failed to furnish water.

Ans. 12. The service on the whole since the water works company took charge has been unsatisfactory, and we have frequently been without water.

355 Ans. 13. I do not remember how often, but several times, and to the best of my knowledge at times for 3, 4 or 5 days. I think about a week at one time.

Ans. 14. That I can not answer. I am not on the fire committee and have had no personal observation in that regard. I have heard it complained of, but of my own knowledge I cannot speak.

Ans. 15. I was.

Ans. 16. I voted for the said resolution because the water works company was giving, as I considered it, very poor service, and I thought it was well for the city to own her own waterworks, which the city could not do, provided it would have to pay the water works company as it had been doing for fire protection, and therefore I desired to have the question of whether or not there was a contract between the city and the water works company tested, hence I voted for the resolution solely to raise that question.

Ans. 17. It was not in pursuance of any such scheme to force the water works to sell out, but the real purpose is stated in answer to interrogatory 16.

Ans. 18. There was no such conspiracy.

Ans. 19. As aforesaid I know nothing about the passage of said act.

Ans. 20. I know nothing about —. I never heard of any such purpose.

Ans. 21. None to my knowledge. I know I did not.

Ans. 22. Not to my knowledge.

Ans. 23. I am satisfied the board of mayor & aldermen granted such permission on one or more occasions.

Ans. 24. The water supply Co. did have knowledge of such permission and I never heard of any objection on the part of said company.

Ans. 25. I would say that I presume they knew, as the water supply company had to furnish the water. I know of no other means by which they could have known.

Ans. 26. I can say that there were such closets and I suppose the water supply company had knowledge of the same, that the said knowledge was obtained in the same way as in the case of closets where permission was given by the board of mayor and aldermen.

Ans. 27. I cannot say that the water company had knowledge in each and every instance.

Ans. 28. They could not.

Ans. 29. I know of nothing else that I consider material or of benefit to either party.

W. O. SMITH.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned United States commissioner, in and for the western division of the southern
356 district of the State of Mississippi, W. O. Smith, who, after being by me duly sworn, states that the foregoing answers made by him in answers to interrogatories from 1 to 29 inclusive, are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

J. H. SHORT,
U. S. Com'r.

[SEAL.]

March 15, 1904.

The above and foregoing has the following indorsement thereon, to-wit:—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Deposition of W. O. Smith—Filed 3/21/04. L. B. Moseley, clerk. J. H. Short, D. C.

Deposition of Dave Montgomery.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Mr. D. Montgomery, of Vicksburg, Mississippi, to the following interrogatories and cross interrogatories when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words, and figures, to-wit: "Sworn to and subscribed before me this — day of ——," and signed by the officer, with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you are a member of the board of mayor and aldermen of the city of Vicksburg, and if you state that you
357 are, state when you were first elected a member of said board, and when you were sworn in and assumed the duties of said office, and whether or not you have since said date continually filled said office.

Int. 3. State whether or not you took part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and aldermen of the city of Vicksburg to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and if you state that you did, state what part you took in the same, and state whether or not you were acting in your capacity as alderman, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you know, whether or not Chester R. McFarland while he was superintendent and manager of said waterworks in the city of Vicksburg, took any part in the passage of said bill, if you state that he did, state exactly what action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor and aldermen of Vicksburg, and if so, at what price was said system of waterworks offered for sale to the said mayor and aldermen and how long was said offer open for acceptance.

Int. 7. State, if you know, whether or not there was any scheme or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge, and the price at which it was sought to dispose of said system of water works to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company and the mayor and aldermen of Vicksburg at any time prior to August, 1900, in regard to the service being rendered by the Vicksburg Water Supply Company, and if you state that there was, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint either upon the part of the mayor and aldermen of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnished to said mayor and aldermen, or to the inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

Int. 10. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city.

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works
358 system, at any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as you can how often it so failed, and for how long a period of time in each instance was the said plant closed down, or so failed to furnish water.

Int. 12. State as fully as you can what has been the character of the service rendered by the Vicksburg Water Works Company since it became the owner of said Vicksburg water works system.

Int. 13. State, as near as you can, how often the plant has been closed down since August, 1900, and for what length of time in each instance.

Int. 14. State whether or not, since August 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said company has been sufficient, and if you state that it has, at any time, been insufficient, state as fully as you can how often you have known it to be so and to what extent of insufficiency, and for how long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of water hydrants, but from and after August 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state that you were present, state whether or not you voted for said resolution, and if so, why you voted for the same.

Int. 17. State, if you know, whether or not the passage of said resolution was in pursuance of a scheme to force said water works company to sell to defendant its water works system in the said city of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city, under its said contract, or to unlawfully endeavor to disable said company, from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 19. State, if you know, whether the defendant procured the

passage of the act of March 7th, 1900, authorizing the city of Vicksburg to issue bonds and purchase or construct a water works system, and if you state that the defendant did do any thing to procure the passage of said act, state exactly what was done by the defendant with that end in view?

359 Int. 20. State, if you know, whether or not the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of any inflammatory articles against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers and agents and confederates of the city of Vicksburg against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy, inflammatory and untruthful articles were written and published in and by the newspapers in said city of Vicksburg or any of them, in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission for the offal and excrement from water closets and other sewerage, to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers and agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said water supply company did have such knowledge, state whether or not said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what water closets were so connected with said sewer and discharged into and through the same.

Int. 26. State, if you know, whether any closets or buildings were connected with the said sewer and discharged into and through the same other than those which received from the mayor and aldermen of said city of Vicksburg such permits, and if you state that they were, state if the same Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did, state how you know it had such knowledge.

Int. 27. State, if you know, whether or not the Vicksburg Water Supply Company had full knowledge in each and every instance of every building or water closets therein being connected with said sewer, and discharging offal and excrement into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could

have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active co-operation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel
360 R. Bullock & Company, the Vicksburg Water Supply Company or the Vicksburg Water Works Company.

Int. 29. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

Answers of David Montgomery to Interrogatories.

Ans. 1. David Montgomery residence city of Vicksburg, over the age of 21 years, bookkeeper.

Ans. 2. The fall of 1893, I think, and I have since said time been continuously a member of said board.

Ans. 3. To the best of my recollection, I voted in the board of mayor and aldermen directing the city attorney to prepare a bill to be presented to the legislature authorizing the city of Vicksburg to issue bonds for the purpose of building sewers and empowering it to buy or build a water works plant.

Ans. 4. Nothing more than stated above in answer to interrogatory 3.

Ans. 5. I know nothing of what was done by McFarland in regard to the matter.

Ans. 6. Nothing was done so far as I know by the Vicksburg Water Supply Company. There was some offer by the Vicksburg Water Works Company, but the terms and conditions I do not remember.

Ans. 7. There was some suggestion of a scheme to build a city hall sewerage, and to turn over the water works plant for the bonds authorized to be issued, but I do not remember definitely enough to undertake to state the same.

Ans. 8. There was no such disagreement.

Ans. 9. There was no official complaint that came to the mayor and aldermen, but various complaints came to us in the nature of street talk in regard to the muddiness of the water being furnished by the Vicksburg Water Supply Co.

Ans. 10. I was chairman of the fire committee during the time the Vicksburg Water Supply Company was furnishing water and there were times when the water was insufficient, but I think there was always a same supply of water.

Ans. 11. My recollection is that the Vicksburg Water Supply Company failed to furnish water on one particular occasion, but at my own residence I think we had water at all times.

Ans. 12. The Vicksburg Water Works Company, since it has been in charge has had several break downs.

361 Ans. 13. Several times. I am satisfied 3 or more times.

Ans. 14. Of my own knowledge I know nothing in regard to the sufficiency of pressure for fire protection.

Ans. 15. I was.

Ans. 16. My recollection is I voted against it.

Ans. 17. I never understood the object of that resolution.

Ans. 18. I never heard of any such conspiracy, and I don't believe there ever was any.

Ans. 19. I think the board of mayor and aldermen did what they could to procure the passage of said act. I am satisfied that it was the sense of the board that the said act be passed.

Ans. 20. There was no intention to do anything to injure the water works company, or to force it to sell to the city.

Ans. 21. No, board of mayor & aldermen of the city of Vicksburg did not procure the publication of any inflammatory articles against the Vicksburg Water Works Company, or have anything to do with such.

Ans. 22. There was no such conspiracy.

Ans. 23. Such permission was granted on one or more occasions. I don't remember how many.

Ans. 24. I do not know whether the Vicksburg Water Supply Company had notice or knowledge of such permission, certainly there was no protest or objection made to us until after Mr. Crumpler took charge of the water works system.

Ans. 25. The water company ought to have known better than anybody because no body could connect without using water furnished by the water company.

Ans. 26. I do not know.

Ans. 27. The water supply company ought to have known of the connections made for that purpose.

Ans. 28. I take it that the water supply company must have known and co-operated, otherwise no water would have been furnished for that purpose.

Ans. 29. I know of nothing else that I consider to be of interest or benefit to either party in this cause.

D. MONTGOMERY.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, United States commissioner, in and for the western division of the southern district of the State of Mississippi, David Montgomery who after being by me duly sworn, states that the foregoing answers made by him in answer to interrogatories from 1 to 29 inclusive, are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

362 Witness my hand and official seal, this the 21st day of March, 1904.

[SEAL.]

J. H. SHORT,
U. S. Com'r.

The above and foregoing has the following indorsement thereon, wit:—# 41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen the City of Vicksburg. Deposition of D. Montgomery. Filed 21/04 L. B. Moseley, clerk, J. H. Short, D. C.

Deposition of W. H. Bruser.

the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Mr. W. H. Bruser, of Vicksburg ississippi, to the following interrogatories and cross-interrogaries when made and verified by oath before any officer authorized administer oaths may be read by the defendant on the hearing the above entitled cause as evidence subject only to objections for relevancy and incompetency, notice, commission and all other atter of form being hereby waived, and the certificate of the officer fore whom the affidavit shall be made, shall be conclusive evience of his authority to administer oaths, it being agreed that the id certificate shall be sufficient if in the following words and figures, -wit:

"Sworn to and subscribed before me, this — day of ——," and gned by the officer with proper dates filled in the blanks above nown.

W. J. VOLLOR &
BRYSON & DABNEY.
For Def't.

HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, and place of residence.

Int. 2. What is your business or occupation and how long have ou been engagaed in the same.

Int. 3. State whether or not that you have at any time made connections with the waterworks mains in the city of Vicksburg, so as o supply water to consumers.

Int. 4. If you state that you made such connections, either individually, or through your agents and employés, state from whom you received orders or authority to make such connections, whether from the water works company, the consumers, or both.

363 Int. 5. State if at any time you tapped the mains of the said water works company, so as to connect the said water

works with water closets, and if you state that you did, state if you did the plumbing and other work necessary for the discharge of said closets?

Int. 6. State whether or not any of the said closets so connected with the water works by you were made to discharge excrement and offal from the same into the underground sewer on Washington street in the city of Vicksburg?

Int. 7. State from whom you obtained your orders or authority to so connect said water closets with said sewer.

Int. 8. State whether or not the superintendent or general manager of the water works company was cognizant of the fact that you were making connections for the discharge of sewerage matter from water closets into the said sewer under Washington street, and if you state that he was, state how you know whether or not he had such information?

Int. 9. State whether or not the water works company or any of its agents or officers or employés gave you permission to connect water closets that discharged into and through the said sewer under Washington street, with the waterworks mains.

Int. 10. State if it is feasible or even possible for the excrement and offal from water closets to be discharged into and through the said sewer under Washington street, except by the use of water from the water works company.

Int. 11. State whether or not the water works company at any time through its agents or officers, or employés, made any objection to you in regard to connecting water closets with the said sewer under Washington street.

Int. 12. State, if you know, whether or not the water works company through its agents, officers and employés, was not openly and notoriously for a number of years preceding the change of management from the water supply company to the water works company, encouraging the use of the Washington Street sewer as a means of discharge for water closets?

Int. 13. State whether or not if in each instance in which a water closet was so connected as to discharge the excrement and offal from it into the said sewer, that the management did not have full knowledge of such connections and discharge and openly encourage the same.

Int. 14. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

364 *Answers to Interrogatories Made by W. H. Bruser.*

Ans. 1. W. H. Bruser, age 42 years, residence Vicksburg, Miss.

Ans. 2. Plumbing tin and iron work, about 25 years.

Ans. 3. Have never made connections with water works mains Connections from mains to curb lines are now made by J. B. Smith, and were formerly made by Jno. J. Mulligan.

Ans. 4. Did not connect with mains.

Ans. 5. No.

Ans. 6. I have put up water closets that connected with the Washington Street sewer, but unless the supt. of waterworks actually saw the work done, he would not from plumber's report, or from his application to get a permit, know where the closet emptied. The plumber reports the number and kind of fixtures in a house, but does not report where they waste into.

Ans. 7. Several times from the aldermen in session, other times without their permission.

Ans. 8. Whenever I wanted to do plumbing work of any description, it is first necessary to go to the waterworks office and make a written application for a permit to do work beyond the curb line. This is kept as a record until the completion of the work. When the work is completed, I make out a report stating the number and kind of fixtures placed in the building, but do not either in the application or report state where the fixtures empty. When this report is filed with the water works company they endorse on the permit, originally given for this work, that the report was filed on such a day (dating it day reported).

Ans. 9. Water Co. gave permit to do work, but did not from my application for permit, or my report on work done, know that they emptied into the Washington St. sewer.

Ans. 10. Hardly possible unless the party put up an elevated tank.

Ans. 11. Don't think they did as they could not know from my report that I was connecting with it.

Ans. 12. Not that I know of.

Ans. 13. I am satisfied they did not in all cases, as reports didn't show they emptied there.

Ans. 14. I know nothing further of importance in regard to this case.

W. H. BRUSER.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, the undersigned, United States commissioner in and for the western division of the southern district of the State of Mississippi, W. H. Bruser, who, after being by me duly sworn, states that the foregoing answers made by him in answer to interrogatories from 1 to 14, inclusive, are true and
365 correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

Witness my hand and official seal, this the 10 day of March, 1904.

[SEAL.] J. H. SHORT,
U. S. Commissioner.

The above and foregoing has the following indorsement thereon, to-wit:—#41. Vicksburg Water Works Co., *vs.* Mayor & Aldermen of the City of Vicksburg.—Deposition of W. H. Bruser.—Filed 3/21/-904. L. B. Moseley, clerk. J. H. Short, D. C.

And this ended the reading of all of the depositions.

Final Decree.

Equity. No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI.

This day this cause came on to be heard in accordance with the motion of complainant and defendant filed January 12, 1904, and the order of this court on the hearing of said motion rendered the said January 12, 1904, upon the original bill, amended and supplemental bill, exhibits answer of defendants, proof and exhibits and the court after hearing and attending the evidence and the arguments of counsel and being fully advised in the premises and being satisfied that the complainant is entitled to the relief prayed for in its original and amended and supplemental bills and for full relief; it is thereupon hereby ordered, adjudged and decreed:—

First. That the defendant, The Mayor & Aldermen of the City of Vicksburg, be and is hereby perpetually enjoined from abrogating or taking away or from, assuming to abrogate or take away the franchises or contract rights of complainant under and by virtue of the ordinance, franchise or contract of said defendant entitled "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works" ordained the 18th day of November 1886, approved by John W. Powell, mayor, November, 19, 1886, being the ordinance contract, and franchise marked Exhibit "B," to the original bill of complaint, and said ordinance, contract and franchise being specifically and accurately set out in words and figures in the pleadings, which ordinance,
366 contract and franchise was acquired by and is the sole and exclusive property of said complainant.

Second. That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said

defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by defendant thereunder.

Third. That said defendant be and is hereby directed to rescind its resolution and ordinance adopted the 7th day of November, 1900, which is in words and figures as follows:—

Resolved, "That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor & aldermen deny any liability upon any contract for the use of the water works hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises."

And also to rescind the ordinance or resolution of said defendant adopted the 7th day of February, 1901, when the said defendant adopted the report of the committee on water works as set out in the pleadings.

Fourth. That the said defendant refrain from in any manner accepting the benefits of or proceeding under the act of the legislature of the State of Mississippi, approved March 9, 1900, and from issuing bonds under and by virtue of said act or any other act, or ordinance for the purpose of erecting water works of its own during the period prescribed in said ordinance contract and franchise.

Fifth. That the said defendant refrain from constructing water works of its own until the expiration of the period prescribed in the said ordinance contract and franchise dated 18th of November, 1886.

Sixth. That the said defendant be and is hereby required to pay all monies due or owing or that may hereafter be due or owing to said complainant under and by virtue of said ordinance, contract and franchise.

Seventh. That the said defendant be and hereby is perpetually enjoined from making or adopting any resolution or ordinance refusing to pay the contract price of water fixed by said ordinance, contract and franchise, until the expiration of the period prescribed in said ordinance, contract and franchise.

Eighth. That the said defendant be and is hereby enjoined from permitting any further connections for the conveyance of sewerage or excremental matter, with the storm sewer or culvert located on Washington street, city of Vicksburg, and the defendant is hereby directed and commanded within twelve months from this date to extend said sewer or culvert and construct an outlet therefor so as to discharge said sewerage and excremental matter into the
367 Yazoo or Mississippi river below the intake pipe of complainant, provided that if the defendant is unable to construct or extend said sewer or culvert and construct said outlet within twelve months from this date, it can apply to this court for good cause shown for an extension of time beyond the said period of twelve months.

Ninth. That said defendant pay the costs of this cause to be taxed.

Ordered, adjudged and decreed this the 18th day of May, 1904.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Equity—Vicksburg Water Co. *vs.* Mayor & Aldermen of City of Vicksburg—Ent. M. B. No. 8 folio 357, (at Jackson) Filed and ent. M. B. 2, p. 58 *et seq.* May 18th, 1904 L. B. Mosely, clerk. J. H. Short, D. C.

Petition by Complainant to Make Corrections in Final Decree.

In the Circuit Court of the United States, Southern District of Mississippi, Western Division Thereof.

Equity. No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI.

To the Honorable H. C. Niles, judge:

Your petitioner, The Vicksburg Water Works Company, complainant in the above cause, would respectfully show unto your honor that *in* section "Second" of the decree rendered by the court in this cause on the 18th day of May, 1904, reads as follows:

"Second. That said ordinance, contract and franchise be and is hereby declared and held to be *and* in every respect legal valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privilege and benefits acquired by defendant thereunder."

Your petitioner would further show that the word "defendant" immediately preceding the final word, "thereunder," of said section, is a clerical error, and was written by reason of said error for the word "complainant," which is the proper word in the said place in said section and was intended to be written there.

The premises considered your petitioner respectfully prays for an order of your honor correcting the said mistake so as to make the said section read as follows:—

368 Second. That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing

or interfering with the rights, privilege and benefits acquired by complainant thereunder.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Solicitors for Complainant.

The above and foregoing has the following indorsement thereon to-wit:—#41. Equity—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Petition to make corrections in order—Filed May 25th, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

Order Making Corrections in Final Decree.

Circuit Court of the United States, Southern District of Mississippi, Western Division Thereof.

Equity. No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI.

Application having been made by the complainant in this cause for an order correcting the decree rendered in this cause on the 18th day of May, 1904, so as to strike out the word "defendants" immediately preceding the final word thereunder of section "Second," and insert instead thereof the word "complainant," so as to make the said section read as follows: "Second: That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from any manner disturbing or interfering with the rights, privileges and benefits acquired by complainant thereunder;" and the court being satisfied that the said word "defendants" was inserted through clerical mistake, and that the said word "complainant" is the proper word and the word intended to be written at the said place, and therefore that the said correction is in accordance with the facts:

It is hereby ordered, adjudged and decreed that the clerk of this court make the said correction.

H. C. NILES, *Judge.*

369 The above and foregoing has the following indorsement thereon, to-wit: Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Order authorizing corrections.—Filed May 25, 1904. Entered M. B. 2 p. 63. L. B. Moseley, clerk. J. H. Short, D. C.

Petition of Defendant for Appeal.

In the Circuit Court of the United States of the Western Division of the Southern District of Mississippi.

No. 41.

THE VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The above named respondent, The Mayor & Aldermen of the City of Vicksburg, conceiving itself aggrieved by the final decree entered in the above entitled cause on the 13th day of May, 1904, hereby appeals from said final decree and prays that this its appeal to the Supreme Court of the United States may be allowed and that a transcript of the record, proceedings and papers upon which said final decree was made, duly authenticated, may be sent to said Supreme Court of the United States.

And now, at the time of filing this petition for appeal, said respondent, The Mayor & Aldermen of the City of Vicksburg, appellant, files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the Supreme Court of the United States. And your petitioner will ever pray.

THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, *Appellant.*

By —— ——, *Solicitors.*

The above and foregoing has the following indorsement thereon, to wit: #41. Equity. In circuit court of U. S. for W. Division of S. district of Miss. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Petition for appeal.—Filed Nov. 9, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

370 *Assignment of Errors.*

No. —.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
MAYOR AND ALDERMAN OF THE CITY OF VICKSBURG, Respondent.

Now comes the respondent and files the following assignment of errors upon which it will rely.

I.

That the United States circuit court erred in allowing the City Water Works & Light Company to withdraw its petition filed in said cause on December 2nd, 1903, whereby it prays to be admitted as a

party complainant, and also in allowing the said City Water Works & Light Company to withdraw its original bill in the nature of the supplemental bill filed in said cause on the — day of May, 1904, and the said court erred in allowing the complainant to withdraw its consent to the filing of said petition and the said original bill in the nature of a supplemental bill, the order authorizing the withdrawal of said several papers being in words and figures as follows, to-wit:

"This day came on to be heard the motion of the City Water Works & Light Company to withdraw from the files its petition herein filed December 2, 1902, and its original bill in the nature of a supplemental bill filed May 5th, 1904, with all exhibits and the motion of the Vicksburg Water Works Company to withdraw from the files its written consent to the filing of said bill.

And the court being fully advised in the premises doth hereby order adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent.

II.

The court erred in refusing to allow respondent to file a supplemental answer setting up that the said City Water Works & Light Company was an essential party complainant and that unless it should be made a party complainant the court could not proceed but must dismiss the bill.

III.

The court erred in refusing to continue the said cause on motion of respondent after it had permitted the City Water Works & Light Company to withdraw its petition and its original bill in the nature of a supplemental bill whereby it sought to be named a party complainant in said cause and after it had permitted the complainant to withdraw its consent for the City Water Works & Light Company to be made a party complainant.

371 IV.

The court erred in granting the complainant's motion to strike from the evidence interrogatories #135, 136, 137, 138, 139, 140, 141, 142, 143, & 147 propounded to witness M. O. Crumpler and the answers thereto, the said interrogatories and answers being as follows, to-wit:

"X Int. 135. Mr. Crumpler, what has become of the corporation heretofore existing and known as the Vicksburg Water Works Company, have you surrendered your franchise?

Ans. We have not. It has simply sold out what property it had to the City Water Works & Light Company.

X Int. 136. It has now no property of any kind whatever?

Ans. No sir.

X Int. 137. What business is it now engaged in carrying on?

Ans. Nothing.

X Int. 138. How long since it has been engaged in carrying on business or owned any property?

Ans. First of December, 1903.

X Int. 139. What corporate act or acts, if any, has it done since the first of December, 1903.

Ans. I don't know of any except in winding up its business.

X Int. 140. If it has no property and is carrying on no business, what further business has it to wind up?

Ans. It is winding up the accounts that belonged to the company.

X Int. 141. It does then, as a matter of fact, still own some accounts and claims against people?

Ans. Yes, sir.

X Int. 142. Then when you said that it had no property, you meant that it had no tangible property—I meant that it had no water works or anything of that kind.

Ans. Yes sir.

X Int. 147. But it does have claims, rights, choses in action, and things of that kind, unwound up.

Ans. Yes sir.

X Int. 147. You are the manager of the new company, the City Water Works & Light Company, the same as you were the manager of the old company, the Vicksburg Water Works Company are you not?

Ans. Yes sir."

V.

The said court erred in rendering the final decree against respondent because the said decree is contrary to the law and the facts as stated in the pleadings and proof before said court.

VI.

The said court erred in perpetuating by its final decree the injunction against respondent restraining it from erecting a water works plant of its own.

372 VII.

The court erred in granting a mandatory injunction against respondent commanding respondent within one year to build and construct a sewer whereby the sewer now existing on Washington street in the city of Vicksburg should be extended and made to discharge at some point on the Mississippi river south of the intake pipe of complainant.

In order that the foregoing assignment of errors may be and appear of record, the respondent presents the same to the court, and prays that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and that upon hearing the said final decree may be reversed and said cause remanded.

All of which is respectfully submitted.

____ ____,

Sols. for Respondent.

The above and foregoing has the following indorsement thereon to-wit:—41 Equity—In the circuit court of the U. S. for western division of southern district of Mississippi.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Assignment of errors.—Filed the 8th day of November, 1904. L. B. Moseley, clerk.

Order Allowing Appeal.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Coming on this day to be heard at chambers the petition of The Mayor & Aldermen of the City of Vicksburg, respondent in the above styled cause, praying for an appeal to the Supreme Court of the United States from the final decree made and entered in said cause on the 13th day of May, 1904, and the court having read and considered said petition; it is ordered and decreed that the said petition be granted upon the said respondent entering into bond in the sum of one thousand dollars payable to The Vicksburg Water Works Company, complainant in this cause, conditioned to pay and satisfy whatever decree may be rendered against the said Mayor & Aldermen of the City of Vicksburg by the Supreme Court of the United States that citation issue to the said complainant to be and appear before the Supreme Court of the United States on the — day of ——, 1904, to show cause, if any it can, why the decree of this court should not be reversed and remanded.

H. C. NILES,
District Judge.

373 The above and foregoing has the following indorsement thereon to-wit: # 41. Equity. Vicksburg Water W'ks Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Order allowing appeal.—Filed Nov. 9, 1904, L. B. Moseley, clerk, J. H. Short, D. C. Ent. Eq. Or. Book No. 1, pp. 48 & 49.

Appeal Bond.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Know all men by these presents, that we, The Mayor & Aldermen of the City of Vicksburg as principal, and Title, Guaranty & Trust Company of Scranton, Pa., a surety company, are held and firmly bound unto the above named Vicksburg Water Works Company in the sum of ($1000.00) one thousand dollars, to be paid to the said Vicksburg Water Works Company as its interest may appear, to which payment, well and truly, to be made, we bind ourselves jointly and severally, and our and each of our successors and assigns, jointly by these presents.

Sealed with our seals and dated this 8th day of November, 1904.

Whereas, the above named respondent, The Mayor and Aldermen of the City of Vicksburg, have prosecuted its appeal to the Supreme Court of the United States to reverse the final judgment and decree rendered in the above entitled cause by the said circuit court of the United States for the western division of the southern district of Mississippi; now, therefore, the condition of this obligation is that if the above named, Mayor & Aldermen of the City of Vicksburg shall prosecute its said appeal to effect and answer all costs and damages that may be adjudged or awarded against it if it shall fail to make good its plea, then this obligation to be void; otherwise in full force.

THE MAYOR AND ALDERMEN OF
CITY OF VICKSBURG,
W. L. TROWBRIDGE, *Mayor,*
TITLE GUARANTY & TRUST CO.,
By PAXTON & O'NEIL, *Agents,* &
BRYSON & DABNEY, *Att'ys.* [SEAL.]

In presence of.
—— ——.

Approved, this Nov. 8th, 1904.
H. C. NILES, *Judge.*

374 The above and foregoing has the following indorsement thereon to-wit:—# 41. Equity. In circuit court of U. S. for W. division of southern district of Miss.—Vicksburg Water Works Co. vs. Mayor & Aldermen of the City of Vicksburg.—Appeal bond.—Filed Nov. 9, 1904. L. B. Moseley, Clerk, J. H. Short, D. C.

Motion Asking that Clerk be Directed to Send up Original Automatic Water Pressure Gauge Sheets.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes The Mayor & Aldermen of the City of Vicksburg, appellant in the above styled cause, and moves the court for an order directing the clerk of said court to omit from the transcript of the record in said cause, to be prepared by him for the Supreme Court of the United States, the sheets or disks of paper showing the readings of the automatic water pressure gauges maintained in the office of M. O. Crumpler and the Crawford Street engine house, the said sheets being exhibits to the depositions of M. O. Crumpler and Charles Schuler, read in evidence in the trial of said cause, and in lieu of a transcript of said sheets that said clerk be directed to send up to the clerk of the Supreme Court the original sheets along with his transcript of the remaining parts of said record.

The above and foregoing has the following indorsement thereon, to-wit: # 41. Equity. In circuit court of U. S. western division of southern dist. of Miss.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Motion for leave to omit water pressure gauge sheets from record.—Filed Nov. 9, 1904. L. B. Moseley, clerk. J. H. Short, D. C. Ent. Eq. Order Book No. — at pp. 47 —.

Order Directing Clerk to Send up Original Automatic Water Pressure Gauge Sheets.

No. 41.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The above styled cause came on this day to be heard at chambers on the motion of The Mayor & Aldermen of the City of Vicks-
375 burg, appellant, to have certain papers forming part of the record in said cause; to-wit, the sheets showing the readings of the automatic water pressure gauges, omitted from the transcript of said record on appeal to the Supreme Court of the United States and in lieu of such transcripts that the original papers be sent up to

the said Supreme Court, and the court having read and considered said motion and being of the opinion that it is impracticable to make a transcript of the said sheets, it is ordered that the said sheets be omitted from the transcript of the said record and in lieu of such transcript that the original sheets be sent up to the clerk of the Supreme Court under proper certificate along with the transcript of the other parts of the said record, and the clerk of this court is hereby authorized and directed, in preparing his transcript of the said record to omit said sheets therefrom but *the* send the original sheets along with his transcript of the said record.

Ordered at chambers this the 8th day of November, 1904.

H. C. NILES,
District Judge.

The above and foregoing has the following indorsement thereon, to-wit: # 41. Equity. In circuit court of U. S. for western div. of southern dist. of Miss.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Order directing clerk to omit automatic water pressure gauge sheets from record and use original sheets in lieu thereof. Filed Nov. 9, 1904. L. B. Moseley, clerk, J. H. Short, D. C. Ent. Eq. Or. Book No. 1. pp. 47 & 48.

Citation.

UNITED STATES OF AMERICA:

To the Vicksburg Water Works Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the circuit court of the United States for the western division of the southern district of Mississippi, wherein The Mayor & Aldermen of the City of Vicksburg is appellant and *your* are appellee to show cause if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable H. C. Niles, district judge for the State of Mississippi, this 8th day of November, in the year of our Lord one thousand nine hundred and four.

H. C. NILES,
District Judge.

To the U. S. Marshal:
To serve.
Attest
L. B. MOSELEY, *Clerk.*
J. H. SHORT, *D. C.* [SEAL.]

376 The above and foregoing has the following return thereon indorsed by the marshal:

"Received this writ in the city of Vicksburg, on Nov. 17th, 1904,

and served the same in Vicksburg, on M. O. Crumpler, for the Vicksburg Water Works Co., by handing him a true copy.

EDGAR S. WILSON,
U. S. Marshal,
By E. C. YELLOWLEY, *Deputy.*

Fees. $2.00.

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Equity. Vicksburg, W. W. Co. *vs.* Mayor & Aldermen of the City of V'burg. Citation.—Return executed, and filed Nov. 22nd, 1904, L. B. Moseley, clerk. J. H. Short, D. C.

Order Allowing Copy of Lost Order to be Supplied and Filed.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It appearing that on the 13th day of May, 1904, the defendant in the above entitled cause filed therein a motion for leave to file a supplemental answer, which was attached to the said motion, and for a continuance with leave to take testimony to support the allegations of the said supplemental answer, and it further appearing that the said motion was over-ruled and that a formal order to that effect was prepared by counsel for defendant and signed in open court by the presiding judge, and it further appearing that the said order has been lost or misplaced, and the paper hereto attached is substantially a copy of the mis-placed order, it is ordered, that the clerk file the said paper hereto attached with the papers of this cause as of the 13th of May, 1904, and when so filed it shall be and constitute a part of the record in this cause as fully and to the same extent as the said lost or misplaced order.

So ordered, this 28th day of November, 1904.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit: # 41. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of Vicksburg.—Order allowing copy of lost order to be filed. Filed Nov. 29, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

377 I, L. B. Moseley, Clerk of Circuit Court of the United States for the Western Division of the Southern District of Mississippi, hereby certify that the foregoing 376 pages of printed matter contains a true and correct copy of the original Bill, amended bill, the answers, exhibits, proof contract and all other papers contained in cause No. 41 on the Equity side of this court, in which The Vicks-

burg Waterworks Company is complainant and the Mayor
378 and Aldermen of the City of Vicksburg is Defendant, as fully as the same remains on file and of record in my office at Vicksburg, Miss., in said District except Exhibit "B" to the Deposition of M. O. Crumpler filed November 20th, 1902, which is missing from the files and which I am unable to find. And the automatic gauge sheets which were exhibits to deposition of M. O. Crumpler.

Witness my official signature and the seal of said Circuit Court, at Vicksburg, in said District the 12th day of April A. D. 1906.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk,*
By J. H. SHORT, *D. C.*

379 *Temporary Restraining Order.*

In the Circuit Court of the United —, Western Division of the Southern District of Mississippi, January Term, 1905, Eleventh Day of January, 1905.

Equity. # 79.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG.

This day this cause came on to be heard in open court on motion of the Vicksburg Water Works Company, for a temporary restraining order on bill and exhibits thereto; and after hearing arguments *for* counsel on both sides, and the same being considered by the Court, it is therefore ordered, adjudged and decreed that the Vicksburg Water Works Company be and is hereby granted a temporary restraining order enjoining defendant from in any manner interfering with the rules and regulations of Complainant, the Vicksburg Water Works Company, and the water rates for the inhabitants of defendant now in force established by the Vicksburg Water Works Company, and in any other manner interfering with complainant's contract rights and that the Defendant is hereby restrained from enforcing the ordinances passed by it as set out in Complainant's bill; and that the Complainant be and it is hereby required to give a good and sufficient bond in the sum of Five Hundred Dollars for the payment of Costs.

Ordered adjudged and decreed in open Court, this the 11th day of January, A. D. 1905.

H. C. NILES, *Judge.*

The above and foregoing order appears of record in Minute Book 2. at page 102 of the official records of this office.

380 *Bond for Injunction.*

District Court of the United States, Western Division of the Southern District of Mississippi.

Know all men by these presents that we, the Vicksburg Water Works Company, principal, and M. O. Crumpler and S. S. Hudson, Sureties, are held and firmly bound unto the Mayor & Aldermen of Vicksburg in the sum of Five Hundred dollars ($500.00), for the payment whereof well and truly to be made to the said Mayor & Aldermen of Vicksburg, we bind ourselves, our heirs, representatives and assigns, jointly and severally by these presents.

The condition of the foregoing obligation is that whereas the said Court has this day granted a temporary restraining order unto the Vicksburg Water Works Company enjoining the Mayor & Aldermen of Vicksburg from in any manner interfering with the rules, regulations and water rates established by the Vicksburg Water Works Company and in any other manner interfering with the Vicksburg Water Works Company contract rights in a suit in Equity No. 79; Now therefore if the said Vicksburg Water Works Company shall *pay* well and truly pay all costs that may be awarded in said suit by the District Court of the United States for the Western Division of the Southern District of Mississippi, if the said restraining order shall be held by the said Court to have been improperly or wrongfully sued out, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

In witness whereof the said Vicksburg Water Works Company has caused its name to be subscribed and its seal to be affixed, and the said M. O. Crumpler and S. S. Hudson have hereunto set their hands and seals this the 11th day of January, A. D. 1905.

VICKSBURG WATER WORKS COMPANY,
By M. O. CRUMPLER, *Treasurer.*
M. O. CRUMPLER.
S. S. HUDSON.

Approved January 11th, 1905.

L. B. MOSELEY, *Clerk.*
J. H. SHORT, *D. C.*

The above and foregoing has the following indorsement thereon to-wit:—District Court of the United States, West. Div. Sou. Dist., Miss. Equity No. 79 Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Bond. Filed Jan'y 11th 1905 L. B. Moseley, Clerk J. H. Short, D. C.—Hudson & Fox, Attorneys at Law, Vicksburg, Miss.

381 *Injunction Writ.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Southern District of Mississippi and the Western Division Thereof.

Equity. 79.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The President of the United States of America to the Mayor and Aldermen of the City of Vicksburg, Mississippi, its officers, servants, employees, agents, attorneys, counsel, solicitors, Greeting:

Whereas a bill of complaint has been lately exhibited in the Circuit Court of the United States, for the Western Division of the Southern District of Mississippi, by the Vicksburg Water Works Company to be relieved touching the matters and things in said bill contained, and praying for an injunction restraining you as hereinafter set forth, and obtained a fiat of the Honorable H. C. Niles, Judge granting said injunction, and bond and security having been given as required by said fiat and statute, We therefore strictly command and enjoin you under penalty of contempt of Court that you absolutely refrain from in any manner interfering with the rules and regulations of said Vicksburg Water Works Company, and the water rates for the inhabitants for said City of Vicksburg, Mississippi, now in force established by the Vicksburg Water Works Company, and in any other manner interfering with Complainant's contract rights; and you are hereby restrained from enforcing the ordinances passed by you as set out in Complainant's bill, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved.

Now therefore you, the said B. W. Griffith, Mayor, W. O. Worrell, J. B. Cowan, Andy Garvey, P. M. Harding, W. H. Miller, Jerry Cronin, Frank Barber, D. J. Shlenker, P. H. Feld, and W. J. Hossley, Aldermen of the City of Vicksburg, Mississippi, and the officers, servants, attorneys, counsel, solicitors of said defendant are strictly commanded and enjoined under the pains and penalties which may fall upon you, and each of you in case of disobedience that you forthwith, and until the further order, judgment and decree of this Court, desist and refrain from doing the matters and things above set forth.

382 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of this Court at Vicksburg, Mississippi, this the 11th day of January, 1905.

Attest:

L. B. MOSELEY, *Clerk,*
By J. H. SHORT, *D. C.*

Return on Injunction Writ.

"Received in office January 11, 1905, Delivered for service to Deputy Yellowley January 11, 1905, at Vicksburg, Miss. Received this writ Jan. 11th, 1905 & on Jan. 12th served same in Vicksburg, Miss. on the following *name* persons. to wit—B. W. Griffith, Mayor—W. O. Worrell, J. B. Cowan, Andy Garvey P. M. Harding, W. H. Miller Jerry Cronnin, Frank Barber, D. J. Shlenker P. H. Feld & W. J. Hossley by handing each a true copy thereof

Fees 22.00
Ex 2.00

24.00

EDGAR S. WILSON, *Marshal,*
By E. C. YELLOWLEY, *Deputy.*

The above and foregoing has the following indorsement thereon, to-wit: 79 Equity Vicksburg Water Works Company *vs.* Mayor & Aldermen of Vicksburg.—Writ of Injunction—Returned executed filed and entered Jan'y 24, 1905. L. B. Moseley, Clerk. J. H. Short, D. C.

Answer.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable Judges of the Circuit Court of the United States for the Western Division of the Southern District of Mississppi:

The answer of the Mayor And Aldermen of the City of Vicksburg erroneously designated as The Board of Mayor & Aldermen to the original bill of complaint herein marked "filed January 7th 1905" or to such parts thereof as defendant is advised it is material and necessary for it to answer unto, and reserving all right of objection and exception to the errors and inaccuracies therein contained, answering says:—

It admits the execution of the ordinance of 1886 of which a copy is filed with the original bill of complaint in the case of the Vicksburg Water Works Company *v.* the Mayor & Aldermen of Vicksburg, being numbered forty-one on the docket of this Court, the
383 files of which have been made exhibits to Complainant's original bill, purporting to be a contract between defendant and Samuel R. Bullock & Co., their associates, successors and assigns.

It admits that Samuel R. Bullock & Co., as authorized by the terms of said ordinance assigned all of their rights and privileges there-

under to the Vicksburg Water Supply Company, a corporation organized under the laws of the state of Mississippi which constructed, and operated the system of water works contemplated by said ordinance until about the year 1900.

It admits that in the year 1900 complainant acquired the plant of said Vicksburg Water Supply — together with the rights to operate the same in the City of Vicksburg, but it denies that it acquired the privilege or immunity described in section 13 of said ordinance under which Samuel R. Bullock & Co. their associates, successors or assigns were given authority to make such rates and charges for the use of water to be supplied as they might determine, not to exceed fifty cents per thousand gallons.

On the contrary it avers that such privilege or immunity was not acquired by Complainant through its purchase of said plant, property and right to operate the same as aforesaid, and that the said privilege or immunity is not now possessed by it.

It avers that such privilege or immunity did not pass by the sale of the plant of said Water Supply Company, and of the privilege to, operate the same as aforesaid, at which sale M. O. Crumpler became the purchaser, nor by the sale subsequently made by the said M. O. Crumpler some time during the year 1900 to the Complainant. It refers to the particulars of the sale under said mortgage to M. O. Crumpler, and of the sale by M. O. Crumpler to Complainant, to the original bill filed herein in cause 41 which is made an exhibit to the bill of complaint in this cause.

It avers that the sales above referred to were made in manner and form as set out in the original bill filed in said cause number 41.

It admits that said cause number 41 went to a final decree in this Honorable Court on the — day of May, 1904, and that there was an amended bill filed in said cause, and defendant prays that said original and amended bills in said cause number 41 may be taken and treated as a part of this answer for the purpose of showing the title and rights of complainant, and also for the purpose
384 of showing the date at which the Complainant corporation was chartered, which it avers was sometime in the year 1900.

It admits that a decree was rendered in said cause number 41 as stated on May 18th 1904.

It denies that the effect of said decree was to deprive defendant of the power to enact and enforce ordinances, or any one of them, of which copies are filed with complainant's bill.

It avers that if said decree is susceptible of being so construed it went beyond the allegations and facts disclosed in said cause, the issues therein involved and the relief prayed.

It avers that the power of the defendant to enact and enforce such ordinances was not involved in said cause, was not considered by the Court, and that it in no respect came within the adjudication of said decree.

It avers that the question as to whether the privilege or immunity described in section thirteen of the ordinances of 1886 as aforesaid was acquired by the said M. O. Crumpler, or by the Com-

plainant, was not involved in the proceedings resulting in said decree and was not passed upon or decided by this Court.

It avers that the ordinances herein complained of were adopted by it but a short time before the final hearing of said cause number 41 to-wit, in April 1904, and the fact of their adoption was well known to Complainant, its agents and attorneys.

It avers that on the final hearing of said cause number 41 no mention either in the record or otherwise, was made of said ordinances, and that they were not considered by this Court, nor any question pertaining to the right of defendant to enact them. And so respondent avers that the decree in said cause number 41 in no wise curtailed or affected its power to enact and enforce said ordinances.

It avers that since the rendition of said decree complainant has instituted proceedings in this Honorable Court to subject the Mayor and Aldermen of the City of Vicksburg, as for contempt, by reason of the enactment of said ordinances, and their contemplated purpose to enforce the same, it being alleged that in so doing they had violated the injunction which was granted in said cause number 41, and the final decree rendered therein.

It avers that at the January term 1905 of this Court said
385 contempt proceedings were dismissed, it being adjudged by the Court that the said injunction and final decree in said cause number 41 did not embrace the matter of said ordinances, or determine the power of defendant to adopt ordinances limiting or regulating their rates paid for water charged by Complainant to its patrons.

It avers that on March 19th, 1904, the Legislature of Mississippi passed an act authorizing cities and towns in the State to prescribe maximum rates for water supplied by water companies to the inhabitants thereof, and that in pursuance of said act of the Legislature, and to meet the necessity created by the arbitrary and unreasonable rates and regulations exacted and enforced by complainant it enacted the ordinances set out in Complainant's bill, whereby maximum rates were prescribed for water supplied to the inhabitants of said city.

It avers that it had ample power to enact said ordinances and enforce the same, for the following reasons:—

1. Because the privilege or immunity described in section thirteen of the ordinance of 1886 by which Samuel R. Bullock & Company their associates or assigns, were authorized to make such rates and charges for the use of water as they might determine, has never been passed to and become vested in the Complainant corporation.

2. Because it had no authority by said ordinance to bind the inhabitants of the City of Vicksburg to pay such rates and charges for the use of water as the said Samuel R. Bullock & Co. their associates, successors and assigns might determine, and that the legal effect of the ordinance of 1886 was only to bind the City of Vicksburg as to water consumed by itself.

3. Because the Complainant corporation was organized under the laws of the State of Mississippi in the year 1900, and by virtue of the provisions of the Constitution of the State its charter was subject to amendment, alteration or repeal by the State legislature. It avers that the effect of the act of the Legislature as aforesaid of March 19th 1904 was to alter and amend complainant's charter so that, anything in the ordinance of 1886 to the contrary notwithstanding, defendant was thereafter empowered to fix water rates in manner and form as it did or attempted to do through the ordinances herein complained of.

It avers that Complainant cannot execute its powers except as they are prescribed by its charter, and as they have been or
386 may from time to time be altered or amended by the Legislature of the State, and that in determining its power this Court can only consider its charter and such amendments and alterations as have been made or shall hereafter be made thereto.

It avers that the transfer to or acquisition by it of the rights and privileges vested in Samuel R. Bullock & Co. by the ordinance of 1886, even if the same have been transferred to or acquired by it, cannot enlarge its corporate powers, or exempt it from the power of the legislature to alter, amend or repeal its charter.

4. Even admitting the right of Complainant to charge as much as fifty cents per thousand gallons for water furnished, the ordinance enacted by defendant fixing rates to be charged where water is not measured by meters, is not thereby affected. The ordinance of 1886 at most relates only to the rates to be charged upon water actually consumed.

Further answering it denies that at the rates prescribed by the ordinances herein complained of it is impossible for Complainant to do business as is alleged by paragraph three of its bill, without bankruptcy or other serious damage.

It admits that some of its patrons are refusing to pay the rates exacted by Complainant, but avers that this is not true to the extent claimed. In this connection it avers that complainant not only claims the power to charge as much as fifty cents per thousand gallons for water where water meters are used to measure the quantity consumed, but also the power to charge as much as two dollars per month for every meter whether any water is taken during the month through such meter and consumed, or not.

It avers that by one of the said ordinances complained of defendant sought to prohibit complainant from exacting the said sum of two dollars per month where the charge for the aggregate of water passing at that time through the meter and consumed, even if paid for at the rate prescribed by Complainant, would be less than that amount, and in cases where no water at all had been consumed. In that respect it avers that even if Complainant has the power to charge as much as fifty cents per thousand gallons, the said ordinance is valid and should be upheld by the Court, because it shows that under no view of Complainant's alleged contract rights is it entitled to charge more than fifty cents per thousand gal-

lons, and that by charging two dollars per month without
387 regard to the water consumed it charges more than fifty cents per thousand gallons, and does great wrong and injustice to the consumers of water.

It shows that the consumers have paid for and own the said meters and that complainant has been at no expense whatever about them.

It denies that complainant has been damaged in the sum of Twenty Thousand dollars, or that it has been wrongfully deprived of any sum whatsoever by reason of said ordinances or any of them.

It avers that many of the patrons of Complainant are not paying the rates charged by complainant because they involve the payment of said minimum meter rate which made the rate in excess of fi-ty cents per thousand gallons, and because they were not willing to pay said rate of two dollars per month, irrespective of the quantity of water used by them.

It avers that complainant would not permit them to pay in any other manner, and that they were not even allowed to pay at the rate of fifty cents per thousand gallons unless they would pay the said two dollars per month, which as heretofore shown, is exacted in violation of Complainant's alleged contract.

It avers that a large propo-tion of the money which has not been paid by patrons of complainant is because of this condition of things, and that the Complainant is to a large extent the aggressor and wrongdoer, and not this defendant or the consumers of water.

It further avers that many of the patrons of complainant are taking water by what is called "flat rates" where no meters are used, and where the amount of water consumed is not measured, and that Complainant will not allow them to pay the reasonable and just rates which have been in force before the recent increase in rates made by *them*, which has given rise to this, controversy, and that it refuses to accept any payment from those taking water under the "flat rate" system unless they will pay the unreasonable and unjust rates now exacted.

It avers that if the water in such cases could be measured the rate exacted by complainant would be largely in excess of fi-ty cents per thousand gallons.

Inasmuch as the water in such cases is not measured so that the quantity of water used under the "flat rate" system cannot be determined, it avers that by virtue of said Act of the Legislature of 1904 it has the power to fix the rates to be charged under said
system, they not being in any wise in conflict with the
388 provisions of said alleged contract of 1886, even if it be in force as claimed by Complainants. And it avers that its ordinance fixing the rate on "flat rate" system is valid and binding. It shows that if the Complainant desires to obtain the benefit of said alleged contract on the basis of fifty cents per thousand gallons it could and should put meters into the houses of those now

taking water on the "flat rate" system, and thus enable itself to determine the quantity of water consumed by them.

It avers that the first of the three ordinances complained of which are entirely separate and distinct merely provides that complainant shall not be allowed to charge damages for the non-payment of water bills, without previously having presented them to the consumer for payment. And it avers that nothing contained in said alleged contract of 1886 conflicts with the power of defendant to enact said ordinance.

It avers that said ordinance is just and right, and a proper exercise of its police powers for the protection of the consumers against unreasonable and arbitrary rules and regulations of Complainant.

It avers that of the other two ordinances complained of one fixes prices for "flat rates" and the other fixes the maximum rates for water passing through meters and consumed. The latter ordinance also prohibits a minimum rate regardless of the water consumed, but allows a charge of twenty-five cents per meter for examining and reading the same where no water is consumed, or where less than twenty-five cents' worth is consumed.

It avers that even if complainant is invested with all the rights and privileges which were held by the Vicksburg Water Supply Company the only feature in any of said ordinances which can be made a legitimate subject of complaint is that which limits its rights to charge exceeding forty cents per thousand gallons.

It avers that the provision of the ordinance of 1886 authorizing Samuel R. Bullock & Company their successors and assigns, to adopt all needful rules and regulations governing the consumption of water is not contractual, and that defendant under its police power may lawfully nevertheless adopt rules and regulations, and fix water rates to govern the operation of complainant corporation.

It avers that the injunction granted in said cause number 41 had no further scope than to protect complainant from the acts of defendant against which it was prayed; that the ground of complaint in said bill upon which said injunction was granted
389 was the then alleged purpose of the City of Vicksburg by virtue of the act of March 9th, 1900 to construct its own water works; that the said Act was repealed by the Legislature of 1904 at the instance of defendant, and that by reason thereof all rights privileges and powers which may have been thereby conferred ceased to have any force or effect.

It avers that the consumers of water in the City of Vicksburg are entitled to same at reasonable rates; that the complainant corporation is a monopoly in character, and that whatever contract the city may have made with complainant the said consumers are not thereby affected and cannot be required to pay the rates exacted by complainant if unreasonable and unjust.

It avers that the rates fixed by the ordinances complained of are reasonable and just, and that if they are not by the very terms

of the Act of the Legislature of March 15th, 1904, under which they were enacted they are not enforceable.

It avers that if complainant has suffered damage thereby, it is because of its own conduct, inasmuch as it could have immediately upon the passage of the said ordinance have instituted proceedings to test their validity, but instead of so doing it has remained inactive and demanded its own high rates, and the illegal minimum charge as hereinbefore set out, and has declined to accept any other payment from its own patrons unless they would comply strictly and literally with all of its requirements as aforesaid.

It avers that now having secured from this Honorable Court a temporary injunction to prevent the enforcement against it of the criminal features of said ordinances it seeks to treat said temporary injunction as a permanent one, and has sent notices to all of its patrons that it will shut off their water and refuse to supply them unless they comply with its rigid and arbitrary requirements, including the payment of said minimum rate of two dollars per month irrespective of the quantity of water consumed, and of the "flat rates" prescribed by it, although largely in excess of what is reasonable and just.

Defendant avers that on January 9, 1905, it filed its original bill of complaint in the Chancery Court of Warren County, Mississippi, in which, among other things, was set out the enactment by it of the ordinances herein complained of, and that the complainant refused to recognize their validity and to obey their provisions, and praying an injunction restraining complainant from disregarding and violating said ordinances, and praying that a decree
390 might be entered adjudging them to be valid and lawful, and requiring complainant to recognize and be governed by them.

Defendant shows that complainant was made a party defendant to said bill; that it was filed at two o'clock P. M. on Monday January 9, 1905 in said Chancery Court; that summons was immediately issued thereon and placed in the hands of the Sheriff of Warren County, and that the same was served by him upon the Complainant on the same day at 2.35 P. M. Defendant files herewith as exhibit "A," a copy of said Bill, and the process issued and served thereunder, and prays that the same may be taken and treated as part hereof.

It avers that by reason of the filing of said bill, and the service of process thereunder as aforesaid, the Chancery Court of Warren County Mississippi acquired full jurisdiction of all questions and issues growing out of or relating to the subject matter including all questions as to the validity and effect of the ordinances herein complained of, and of all the matters questions and issues presented by the bill of Complaint filed herein.

It avers that no process has ever been issued under the bill of Complaint filed herein, and that at the time of the service of process under the bill filed by defendant in the Chancery Court of Warren County aforesaid it had received no notice oral or otherwise that complainant had filed this bill in this Honorable Court.

Defendant avers that it has made no appearance herein, and that it has done nothing which could be distorted into an appearance save and except that when it learned that complainant was endeavoring to procure from this Honorable Court the temporary injunction hereinbefore referred to it appeared before the judge thereof by its counsel and objected thereto. But defendant avers that prior to the time when its counsel so appeared process had been regularly issued under the bill filed by it in the Chancery Court of Warren County as aforesaid, and had been duly served upon Complainant.

It avers that by reason of the facts herein stated the Chancery Court of Warren County Mississippi acquired prior jurisdiction over all matters issues and questions relating to or growing out of the ordinances herein complained of, and of all matters and issues, set out pleaded and propounded in the bill of complaint filed herein with the right and power to proceed to their consideration hearing and adjudication.

391 It avers that nothing has been done by this Honorable Court in the premises except of a purely preliminary and tentative nature, and it respectfully submits that this Honorable Court should proceed no further herein, and permit the Chancery Court of Warren County to proceed with the hearing and determination of the cause pending before it as hereinbefore stated.

It avers that all rights or privileges which this complainant may possess, whether depending upon and protected by the Constitution of the United States or otherwise, can be fully pleaded and set up by him in the said Chancery Court of Warren County, and that if they should be adjudged against him he may prosecute his cause finally to the Supreme Court of the United States.

In further answer to Complainant's allegation that it has been damaged to the extent of twenty thousand dollars because of said ordinances, defendant against denies that it has been damaged in that or any other amount.

It avers that all sums which may have accrued to Complainant because of water supplied by it in the meantime, if the contention of complainant is sound, are collectible, and that complainant will lose nothing, and will moreover be entitled to legal interest thereon.

It avers that complainant well knew this, and was content to leave the situation as it has been until the arrival of what it might regard as the most suitable opportunity to institute its proceedings to test the validity of said ordinances.

It calls attention in this connection to the fact that the said ordinances were only passed in April 1904, and did not take effect by their terms until May 1st following, so that only about eight months elapsed thereafter before the bill herein was filed.

It avers that the "two years" within which it was claimed in the circular filed herewith as exhibit B. that it- patrons have not paid cover in the main a period of time during which some of its patrons refused to pay for reasons in no wise connected with *with* said ordinances.

It avers that in the early part of 1903, and after the first of January, complainant increased its charges so that they were made ex*hor*-

bitant and unreasonable, and these rates are the ones now sought to be enforced by it.

392 When said increase was made it shows that contracts with its patrons who were taking water by the year had already been entered upon for the year 1903, and they refused to pay said increased rates during that year, claiming that the contract of the previous year had been renewed by implication, and that complainant had no right to alter said contract by increasing its rates until the end of that year. If any of its patrons failed to pay the rates demanded from January 1 1904 it was because they were unreasonable and unjust and because said patrons were advised and believed that they were under no obligation to pay unreasonable rates.

It avers that said rates were unreasonable and exorbitant, and that a court of equity should not aid the complainant in its efforts to exact and collect them.

It denies that the city of Vicksburg had the power by virtue of the act of the legislature approved March 18th, 1886 *go* make a contract by which it could deprive itself of the right to exercise its police power, as it might be thereafter authorized to do by said legislature, to regulate water rates and adopt rules and regulations governing the water companies within its limits, and it denies that it had authority to deprive itself by contract of the power to regulate water rates in said city.

And now having fully answered the defendant prays that it may — allowed to go hence in all its reasonable costs in this behalf expended.

THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG,
By B. W. GRIFFITH, *Mayor.*

DABNEY & McCABE, *Solicitors.*

UNITED STATES OF AMERICA, *State of Mississippi, Warren County:*

This day personally appeared before me, the undersigned, the Clerk of the *Clerk of the* Circuit Court of the United States for the Western Division of the Southern District of Mississippi, B. W. Griffith, Mayor of Vicksburg, who being by me first duly sworn, doth depose and say that he has read the foregoing answer and that he knows the contents thereof; that the matters and things stated therein of his own knowledge are true as stated, and those stated on information and belief he believes to be true.

B. W. GRIFFITH.

Sworn to and subscribed before me this the 6th day of January, 1905.

L. B. MOSELEY, *Clerk,*
J. H. SHORT, *D. C.*

393 EXHIBIT A TO ANSWER.

In the Chancery Court of Warren County, Mississippi.

MAYOR & ALDERMEN OF THE CITY OF VICKSBURG
vs.
THE VICKSBURG WATER WORKS COMPANY.

The Bill of Complaint of the Mayor & Aldermen of the City of Vicksburg, a municipality created and existing under the laws of the State of Mississippi, Complainant, against the Vicksburg Water Works Company, a corporation created under the laws of the State of Mississippi, and domiciled in the city of Vicksburg, and County of Warren and State of Mississippi, defendant.

Complainant respectfully shows that on November 18th, 1886 it adopted an ordinance entitled "An ordinance to provide for the Supply of Water to the City of Vicksburg in Warren County, Mississippi, and to its inhabitants contracting with Samuel R. Bullock & Company, their associates successors and assigns for a supply of water for public use and giving the City of Vicksburg an option to purchase said works" a copy of which is filed and is made exhibit "A" to this bill.

That the effect of said ordinance to enter into a contract with the said Samuel R. Bullock & Co., their associates successors and assigns by which they were to erect maintain and operate a system of water works in accordance with the terms and provisions of said ordinance and of using the streets, alleys and public squares and all other public places within the corporate limits of the City of Vicksburg as they then existed, or might thereafter be extended, and within such other territory as might then or thereafter be under the jurisdiction of said city for the purpose of laying pipes and mains and other conduits and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good, wholesome water to said city and to its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which said ordinance should be in force.

That by section five of said ordinance it was provided that said Samuel R. Bullock & Co., their associates sucessors or assigns, might procure the organization of a water works corporation under the laws of any state, and might assign to it all the rights and privileges acquired under said ordinance, and it was provided that no
394 such assignment should be valid unless such assignee should in writing to complainants accept said ordinance and become bound by its terms and obligations, and it was also provided therein that complainants should pass and enact such further and other ordinances and do, and perform such other acts including the repassage of said ordinance in favor of such assignees corporation as might be necessary to vest in the same the rights and privileges by said ordinance granted. That the said Samuel R. Bullock & Co.,

their associates, successors and assigns, thereafter procured the organization of a water works corporation under the laws of the State of Mississippi, a copy of whose charter will herewith — filed if it should be deemed advisable or necessary, marked exhibit "B," and assigned to said corporation all the rights and privileges acquired under said ordinance, the name of said assignee corporation being the "Vicksburg Water Supply Company."

That the said Samuel R. Bullock & Co., their associates, successors or assigns, notified the complainants of the organization of such water works, and of their assignment to it of all the rights and privileges acquired under said ordinance, and that the said Vicksburg Water Supply Company in writing to complainant accepted said ordinance and became bound by its terms and obligations.

That a system of waterworks — constructed by the said Vicksburg Water Supply Company and in a manner which was satisfactory to the Complainant.

That the said Vicksburg Water Supply Company executed a mortgage on all of its plant and its entire system of water works for the purpose of securing a large sum of money represented by its bonds, and that on the — day of 1900 the said Water Supply Company having defaulted in the payment of said bonds all of its plant and system of water works was sold out in accordance with the terms of the mortgage or trust deed which it had executed, and that at such sale M. O. Crumpler, and other persons whose names are to the complainant unknown, became the purchaser and received a deed of conveyance from the trustee making said sale.

That subsequently thereto a further conveyance was made or pretended to be made, by the said Vicksburg Water Supply Company either to said M. O. Crumpler and associates, or to a corporation known as "The Vicksburg Water Works Company." As to which complainant at this moment is not advised.

That up to the date of the sale so made under said mort-
395 gage or trust deed the said system of water works was conducted and operated by the said Vicksburg Water Supply Company.

That a corporation was created after said sale had been made under the laws of the State of Mississippi, which is domiciled in the City of Vicksburg known as "The Vicksburg Water Works Company," and that to this Company a deed of conveyance was executed by the said M. O. Crumpler and his associates, the aforesaid purchaser at the said sale by which they conveyed the said system of water works and all and singular the property, plant and assets which had been acquired by them in the manner aforesaid, and that the said Vicksburg Water Works Company took possession of said system of water works and operated the same until the — day of 1903 when it made a conveyance of all its property and rights in the premises to the —— a corporation created under the laws of the state of —— that thereafter on the — day of 1904 the said —— reconveyed the same to the said

Vicksburg Water Works Company which is in possession thereof and operating the same.

That by section thirteen of said ordinance it was provided as follows:—

"The said Samuel R. Bullock & Co., their associates, successors or assigns shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of the pipes, the general operation of the works, and to make such rates and charges for the use of said water as they may determine; provided that said rates and charges shall nor exceed fifty cents for each thousand gallons of water."

That in so far as the said section thirteen may have conferred upon the said Samuel R. Bullock & Co. their associates, successors or assigns the right to make such rates and charges for the use of water as they might determine, free from any regulation or control it was only operative and effective so long as the rights, franchise and privileges set out in said ordinance and the system of water works therein authorized to be constructed, remained vested in the Samuel R. Bullock & Co., and such individual persons as might be their associates, successors or assigns, or in the said Vicksburg Water Supply Company, and that the privilege or immunity thereby created was not assignable or transferable by the said Vicksburg Water Supply Company and did not pass and become vested in the said M. O. Crumpler and his associates who
396 purchased as stated, and that it did not pass to and become vested in the Vicksburg Water Works, Defendant hereto.

That the defendant corporation created as before stated under the laws of the State of Mississippi, accepted its charter and holds and maintains and operates under the same with the distinct knowledge that its said charter was subject to alteration, amendment or appeal by the Legislature of the State of Mississippi.

That no matter what may have been the relations between the said Samuel R. Bullock, their associates, successors or assigns, or the said Vicksburg Water Supply Company and complainants, no rights or privileges could be granted by complainant or vested in them by complainants which could in any degree whatsoever modify, limit or control the legislature of the State of Mississippi, in the exercise of its power to alter amend or repeal defendant's charter, and that defendant cannot lawfully operate under its charter, except in accordance with such laws as the Legislature of the State of Mississippi may have passed, or may hereafter pass, altering or amending the same.

That on March 19th, 1904 the Legislature of the State of Mississipppi enacted a law entitled "An Act to enable City Towns and Villages incorporated under general or special laws of this State to fix the rates and charges for the supply of water, electric lights or gas furnished by any individual, company or corporation to any such city town or village, and the inhabitants thereof.

That by the terms of said law the corporate authorities of any city, town or village then or thereafter incorporated under any

general or special law of the state in which any individual company or corporation has been or hereafter may be authorized by such city, town or village to supply water, electric lights or gas to such city, town or village and inhabitants thereof, were empowered to prescribe by ordinance maximum rates and charges for the supply of water, electric lights or gas furnished by such individual, company or corporation to such city, town or village, and the inhabitants thereof, such rates and charges to be just and reasonable.

That the effect of said law was to alter or amend the charter so as to empower the complainant to prescribe by ordinance rates and charges for the supply of water as therein stated.

That in accordance with the authority so vested in it,
397 Complainant passed an ordinance which was approved by W. L. Trowbridge, its Mayor, on April 20th, 1904, prescribing certain rates and charges which were declared to be the maximum rates and charges which could be collected and made by any person, firm, company or corporation engaged in the business of furnishing water to the inhabitants *to* the city of Vicksburg where the water is measured by meters and is charged for acco-ding to the quantity taken or consumed, a copy of which ordinance is herewith filed as exhibit "C" and reference is made to it for a statement in detail of its various and sundry provisions.

That on the same day an additional ordinance of complainant was approved by the said W. L. Trowbridge, its Mayor, fixing the maximum rates and charges which might be made by any person, firm, company or corporation engaged in the business of furnishin- water to consumers thereof, being inhabitants of the City of Vicksburg, where no meter has been put in or attached for ascertaining the quantity used. It was provided in this later ordinance that the person, firm, company or corporation so engaged in the business of supplying water might at its expense put in and install meters of good and reliable kind, and in such cases del ·nd and receive pay according to the quantity of water consu. ·d instead of according to the flat rates therein provided for. A copy of this ordinance is herewith filed as exhibit D. and is referred to for details and particulars.

That by the terms of both of said ordinances a penalty was imposed on any person, firm, company or corporation, or the officer or agent of such, who should charge collect or receive money at a greater rate than therein prescribed for furnishing water.

That notwithstanding the clear legal authority of Complainant to enact said ordinance, and to prescribe the charges and rates to be made for water, as therein stated, defendant denies the authority of Complainant and insists that it is entitled by virtue, of the provisions of section thirteen of the ordinance of November 18th, 1886 hereinbefore referred, to make such rates and charges as it may determine free from any regulation or control whatsoever.

That it has refused openly and notoriously to demand and attempt to collect charges and rates prescribed by said ordinances, but by its general course threats and assertions it is claiming the

right to wholly disregard said ordinance and even to impose penalties upon the inhabitants of the city of Vicksburg who consume
398 water furnished by it for not making payments to it in accordance with the rates and charges fixed by itself, and within the time prescribed by itself, within which such payments are to be made, which rates are in excess of those prescribed by said city.

That many of the inhabitants of the City of Vicksburg terrorized by this position of things and apprehensive as to the validity of said ordinances in view of the general course conduct threat and menaces of defendants have made payments to defendant in disregard of said ordinances and in accordance with the rates fixed by defendants.

That the penalties prescribed for a violation of said ordinances are wholly inefficient to secure the rights of the inhabitants of the City of Vicksburg and to compel the observance by the Company of the requirements of said ordinances.

That if the defendants should openly and notoriously violate said ordinances and endeavor to collect from all of the inhabitants of said city rates and charges in excess of those prescribed in said ordinances that it would necessitate the bringing of criminal prosecutions and would also bring about separate suits between defendants and each of its patrons who resist its demands.

That in view of this extraordinary situation complainant has the right to invoke the aid and assistance of this Honorable Court to compel the defendant to yield obedience to its just authority and to protect the inhabitants of the City of Vicksburg whose rights and interest it is the duty of Complainant to maintain and subserve. Complainant further avers that defendant has wholly failed to carry out the terms of said Contract in that it allowed its plant to be shut down for nearly all of last week, and the City and its inhabitants were without any water for fire extinguishment and home consumption, all of which was the result of gross and wanton disregard of its obligations under said contract and the rights of Complainant and the patrons of said defendants in said City.

Complainant prays that the Vicksburg Water Works Company may be made a party defendant hereto, and required to answer this bill of Complainant, answer under oath being waived, and that upon the coming in of its answer and upon the final hearing of this cause this Honorable Court may decree that the complainant is fully empowered to exercise all reasonable control in regulation of the rates and charges to be demanded and received by de-
399 fendants for supplying water for consumption to the inhabitants of the City of Vicksburg and enjoining the defendant from asserting directly or indirectly or assuming directly or indirectly any rights, privileges or authority by virtue of section thirteen of the ordinance of November 18th, 1886 to make such rates and charges for the use of water as it may determine, or to disregard and refuse obedience to the ordinances approved by W. L. Trowbridge, Mayor, on April 20th, 1904 as hereinbefore

stated and that said contract be cancelled and annulled because of said breech thereof.

If mistaken in the relief herein prayed for, then Complainants pray for such other, further and general relief as this Honorable Court may adjudge it to be entitled to.

And Complainant will ever pray, etc., etc.,

MAYOR & ALDERMEN OF THE
CITY OF VICKSBURG,
By W. J. VOLLER, *Attorney.*

(Copy.)

Filed at 2 P. M. Jan'y 9th, 1905,
J. D. LAUGHLIN, *Clerk.*

STATE OF MISSISIPPI, *Warren County:*

I, the undersigned, Clerk of the Chancery Court of Warren County, hereby certify that the foregoing five pages contain a full, true, complete and perfect copy of the original bill filed in said Chancery Court on the 9th day of January, 1905 at 2 o'clock P. M.

I further certify that I immediately issued a summons, as provided by law, directed to the Sheriff of Warren County, requiring him to summon the said defendant, the Vicksburg Water Works Company in said cause, to appear and answer to the Chancery Court, which convenes on the first Monday of March 1905, in said County; that the said summons has been returned to my office by the Sheriff of Warren County, Mississippi, with the fol-owing returned thereon:

"I have this day executed the within writ personally upon the within named defendant, the Vicksburg Water Works Company, by delivering a true copy of his writ to M. O. Crumpler, Manager of said Company at 2.35 o'clock P. M. this 9th day of January 1905.

J. L. HYLAND, *Sheriff,*
By R. G. GROOM,
Deputy Sheriff."

Witness my hand and seal this the 24th day of January, 1905.

J. D. LAUGHLIN, *Clerk.* [SEAL.]

400 The above and foregoing has the following indorsement thereon to-wit: # 4686 City of Vicksburg—to Original Bill—*vs.* V'burg Water Works Co. Exhibit "A"—No. 79 Eq. Circuit United States, Western Division So. Dist.—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg. Exhibit "A" to answer of Defendant. Filed Feb'y 7/1905 at 11.13 A. M., L. B. Moseley, Clerk. By J. H. Short, D. C.

EXHIBIT B TO ANSWER OF DEFENDANT.

Vicksburg Water Works Company.

VICKSBURG, MISS., *January* 17, 1905.

The United States Court, on May 18th, 1904, rendered a decree and granted an injunction against the Mayor & Aldermen of Vicksburg, — follows:

"That the defendants, the Mayor & Aldermen of the City of Vicksburg be and is hereby perpetually enjoined from abrogating and taking away or from assuming to abrogate or take away the franchise or contract rights of said defendants entitled "An ordinance to provide for a supply of water to the City of Vicksburg in Warren County, Mississippi, and to its inhabitants Contracting with Samuel R. Bullock & Company, their, associates, successors and assigns for a supply of water."

"That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts, or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by Complainant thereunder."

And on January 12th, 1905, granted a restraining order enjoining defendant from in any manner interfering with the rules and regulations of Complainant, and water rates for the inhabitants of defendant now in force established by the Vicksburg Water Works Company and in any other manner interfering with Complainant's contract rights; and that defendant is hereby restrained from enforcing the ordinances passed by it as set out in Complainant's bill (the ordinance of April 21st, 1904).

We beg leave to notify you of the Court's decree and restraining order and request that you please call and settle your account.

We have waited patiently for nearly two years, and we must, in justice to our business, request you to pay up now; or we will
401 have no other alternative but to shut off your water and take action to collect the account, although we would extremely regret to be compelled to take such action, for we wish to maintain most amicable relations with our patrons.

VICKSBURG WATER WORKS CO.

The above is attached to Defendant's Answer, marked Exhibit "B."

Decree Making Injunction Perpetual.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.
Equity. No. 79.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day this cause came on to be heard by consent of counsel upon bill, exhibits, petition of defendant praying, among other things for a modification of the temporary injunction granted in this cause so that complainant shall not be authorized to cut off water from its patrons who refuse to pay the rates of complainant, and claiming the right to have the injunction modified by virtue of the ordinances of the defendant fixing the water rates; and answer of said defendant, and motion of said complainant to make said injunction granted heretofore permanent. And the Court, having heard the argume-ts of counsel, and being fully advised in the premises, and being satisfied that the Complainant is entitled to the relief prayed for in its bill of complaint and for full relief, it is thereupon ordered, adjudged and decreed:

First. That the defendant, the Mayor & Aldermen of the City of Vicksburg be and is hereby denied the relief prayed for in its petition, to-wit, that the injunction be modified so that the Mayor & Aldermen of the City of Vicksburg shall not be restrained from enforcing the ordinances passed by them fixing the water rates and prescribing rules and regulations of the Vicksburg Waterworks Company, and that the Vicksburg Waterworks Company shall not be permitted to cut off patrons water provided patrons pay the rates fixed in said ordinances.

Second. That said defendant be and is hereby enjoined from enforcing the said three ordinances described in said bill to-wit: An ordinance entitled "An ordinance to fix and prescribe maximum rates and charges for water supplied to the inhabitants of the City of Vicksburg whether measured by meters, and for other pur-
402 poses," approved the 20th of April, 1904; an ordinance entitled "An Ordinance to fix and prescribe the maximum flat rates and charges for the supply of water to consumers in the City of Vicksburg, and for other purposes," approved the 20th day of April, 1904; and an ordinance entitled "An Ordinance to require water works, gas and electric companies to present bills before charging damages for a failure to pay them when due," approved the 8th day of December, 1903, so far as the latter relates to Complainant.

That the restraining order heretofore granted in this cause on the 11th day of January, 1905 be and the same is hereby made permanent.

Fourth. That the said defendant be and is hereby enjoined from in any manner interfering with complainant's contract rights under

its said contract with the City of Vicksburg entered into between Samuel R. Bullock & Company and said City under the ordinance of November 19th, 1886.

Fifth. That the defendant be and is hereby enjoined from interfering with the rules and regulations of Complainant, the Vicksburg Waterworks Company, and the water rates for the inhabitants of the City of Vicksburg now in force established by the Vicksburg Waterworks Company.

Sixth. That said defendant be and is hereby enjoined from interfering with the water rates known as the flat rates now in force established by the Vicksburg Waterworks Company.

Ordered adjudged and decreed this 24th day of February A. D. 1905.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon to-wit:—Equity No. 79. Vicksburg Waterworks Co. *vs.* Mayor & Aldermen of the City of Vicksburg, Decree Filed March 6/1905. L. B. Moseley, Clerk. J. H. Short, D. C. (Hudson & Fox, Attorneys at Law, Vicksburg, Miss.)

Replication and Issue.

No. 79.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF VICKSBURG.

Replication & Issue.

This replicant saving and reserving to himself all and all manner of advantage of exceptions which may be had and taken to the manifold errors uncertainties and insufficiencies of the answer of the said defendant for replication thereto saith that he doth and will
403 aver maintain and prove his said bill to be true certain and sufficient in the law to be answered unto by the said defendants and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied to and not herein and hereby well & sufficiently replied unto & *not herein and hereby well & sufficiently replied unto* confessed or avoided, traversed or denied is true; & all which matters and things this repliant is ready to aver, maintain & prove as this Honorable Court shall direct and humbly prays as in & by his said bill he hath already prayed.

VICKSBURG WATER WORKS CO.,
By HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Sol. for Compl't or Repliants.

The above and foregoing has the following indorsement thereon, to-wit: # 79 Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Replication and Issue. Filed July 3, 1905. L. B. Moseley, Clerk. J. H. Short, D. C.

Copy of Complainant's Charter.

The Charter of Incorporation of the Vicksburg Water Works Company.

SECTION 1. That M. O. Crumpler, S. S. Hudson and Lee Richardson, and all other persons who may hereafter become associated with them, and their successors and assigns, be and they are hereby created a body politic and corporate under the name and style of the "Vicksburg Water Works Company," and by that name shall have succession for fifty years; may determine the manner of calling and conducting meetings (the number of shares that shall entitle a member to a vote) and mode of voting by proxy; may create and elect all necessary officers and prescribe the duties, salary and tenure of officers; may sue and be used, prosecute and be prosecuted to judgment and satisfaction before any Court; may have a corporate seal; may contract and be contracted with, within the limits of the corporate powers; may purchase, sell and convey real estate, necessary and proper for the purposes of its business; may purchase, sell and convey all kind of personal property, necessary and proper for its purposes of its business; may borrow and loan money, and secure the payment of the same by mortgage or otherwise; may purchase and issue
404 exchange, notes, stocks and bonds and secure the payment of the collection of the same in the same way; may hypothecate its franchise, stocks and bonds, as well as purchase that of others where the same is not contrary to law, or the Constitution of this state; may make all necessary by-laws not contrary to law, and shall have and use a corporate seal, with the right to alter the same at pleasure.

SECTION 2. That said Corporation may operate, own and control Water Works in the City of Vicksburg and adjacent territory in this state, and construct and build the same for the purpose of supplying its citizens with water for domestic, public, manufacturing, sanitation and power purposes, and to that end, erect, all necessary buildings, buy and own machinery for that purpose, erect and establish reservoir or reservoirs to furnish adequate water supply to meet the fullest demands, to erect engines, rams, and other machinery, necessary or advantageous, to the supply discharged of distribution of water for said parposes; to lay mains, pipes, conductors, aqueducts and sewers, and for the purpose of erecting and establishing the same, whether reservoirs, machinery, ditches, dams, laying pipes or tapping the same, or any other thing or contrivance necessary to the owning, construction or operation of said corporation, and to charge and collect from the users thereof for the same. That said corporation may establish, own and operate and control cotton and brick factories, and to that end may do everything necessary to construct and put

into operation the same, and dispose of their out-put in the overt markets of the country; and said Corporation may receive bids and make bids for the construction and completion of all classes of private work, which is to be executed by contract.

SECTION 3. That the capital Stock of said corporation shall not be less than Two Hundred Thousand Dollars. Said Capital Stock shall be in shares of One Hundred Dollars ($100.00) each, and each share thereof shall be *ebtitled* to one vote as provided by law (under such regulations as the Company in its by-laws provide) Said Stock shall be deemed personal property *transferrible* by assignment according to law and it may be owned and rated by any person, association of corporation of this or any other state, in person or by proxy, with the same power as such stockholder might do, and each stock holder shall only be liable for the amount of unpaid stock subscribed for by him and no further and said stock may be issued for money, or for property actually received or by labor or services actually rendered to this corporation, on such terms as it may contract,
405 and deem necessary and proper for the transaction and conduct *and* business *and* purposes for which it is incorporated, and when so issued is to be taken and deemed by all persons in interest as fully paid up at its par face value, and subject to no further cause or assessment whatever, and this corporation may issue and dispose of its bonds in like manner that the officers of said corporation shall be managed by a board of directors, and such officers and agents under them, as the interests of the company may from time to time require. Said Board of Directors shall consist of such a number of Directors as the Company may determine on from time to time, and said Board shall have the Power to appoint an executive Committee of two or more of their number, with full power to act in their stead and place, at all times, when said Board is not in session, or they may commit the management of such business to one person, with such power as the by laws may prescribe. The person named in the first section hereof, or a majority of them or their assigns, shall meet in the city of Vicksburg, and when duly assembled shall proceed to organize this corporation by receiving its charter etc., and open the books for subscription of stock, and when Two Hundred Thousand Dollars is subscribed and paid into the Capital Stock, said Corporation is authorized to do business and they shall elect a board of Directors, who shall hold their offices for one year, and until their successors are elected and qualified, and said Board of Directors shall meet in the City of Vicksburg, Mississippi, to organize, and elect, President, Vice President, Secretary & Treasurer, and fix compensation for the same, and thereafter, the Board of Directors may meet in the Cities of Vicksburg, Mississippi, New York or Saint Louis, Missouri, for the purpose of transacting the business of said corporation. The same person may hold the offices of Secretary and Treasurer and said Board of Directors may provide for the election and removal of such officers and agents, as they please, and may create and abolish such offices and increase or diminish the duration and compensation thereof, from time to time as — may deem best, and

may adopt, modify or alter the by laws of said Company at their will, and when not inconsistent with the laws of this state, and do all other acts proper and necessary to be done in management and operations of the affairs of said Company.

SECTION 4. That the domicile or home office of said Corporation shall be in the City of Vicksburg, Mississippi and by the laws of Comity between the states, may operate, conduct and execute
406 the aforesaid purposes of corporation, or any parts thereof, through sub-offices located in any States of territories of the United States, and to that end, said stock holders and board of directors may hold meetings and transact any of its business or affairs at either its principal place of business, or at its branch offices as aforesaid. That said Corporation shall also have the power of acquiring by purchase or otherwise, or assignment to it of any contract which the City of Vicksburg, Mississippi, may have heretofore entered into with any other person or persons to provide the supply of water to the City of Vicksburg and its inhabitants and business, and of succeeding to and exercising and enjoying all and singular the rights, powers, privileges, advantages, benefits, immunities, revenues and profits arising out of, or accruing from such contract with said city by ordinance or otherwise, may have conferred and granted to such person or persons and to have such other rights, powers and privileges as are necessary and proper to carry into execution the purposes of this organization and that may now or hereafter be conferred by the Laws of the State of Mississippi.

SECTION 5. That all deeds of conveyance, mortgages, deeds of trust and contracts executed by said corporation shall be signed by the President and attested by the Secretary of the Board of Directors of said corporation, and all other papers and instruments may be executed in such manner and by such officers or agents as may be designated in the by laws, rules and regulations of said corporation.

The foregoing proposed Charter of Incorporation is respectfully, referred to the Honorable Attorney General for his advise as to the Constitutionality and legality of the provisions thereof.

A. H. LONGINO, *Governor.*

25th June 1900.

The provisions of the foregoing proposed Charter of Incorporation are not violative of the Constitution or Laws of the State of Mississippi.

MONROE McCLURG,
Attorney General.

June 25th, 1900.
Executive Mansion Jackson, Mississippi.

The within and foregoing Charter of Incorporation of the Vicksburg Water Works Company is hereby approved.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed this the 25th day of June A. D. 1900.

[SEAL.] A. H. LONGINO, *Governor.*

407 OFFICE OF SECRETARY OF STATE, JACKSON, MISSISSIPPI.

I, J. L. Powers, Secretary of State, do certify that the Charter hereto attached incorporating the Vicksburg Water Works Company was pursuant to the provisions of Chapter 25 of the Annotated Code 1892, recorded in Book of Incorporation in this office.

Given under my hand and the Great Seal of the State of Mississippi, hereunto affixed this 27th day of June, 1900.

[SEAL.] J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, Clerk of the Chancery Court of said County, hereby certify that the foregoing instrument of writing was filed in my office for record on the 11th day of July, 1900 at 10.20 o'clock A. M. and duly recorded in Charter Book No. 1, page 352 *et seq.*

Witness my hand and seal of said Court this 11th day of July, 1900.

J. D. LAUGHLIN, *Clerk,*
By J. L. HYLAND, *D. C.* [SEAL.]

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, Clerk of the Chancery Court in and for the County and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Charter of Incorporation of the Vicksburg Water Works Company as the same appears of record in Book Record of Charters No. 1, Page 352 *et seq.*, and now on file in my said office.

Witness my hand and seal of said Court this 29th day of June, 1905.

J. D. LAUGHLIN, *Clerk.* [SEAL.]

STATE OF MISSISSIPPI, *Warren County:*

Certificate of Chancellor.

Chancery Court.

I, W. P. S. Ventriss, sole Presiding Chancellor of the Fourth Chancery District of the State of Mississippi (said District including the County of Warren) do hereby certify that J. D. Laughlin, whose genuine signature appears to the foregoing certificate of copy of Charter is now, and was at the date of the said certificate, the Clerk of the Chancery Court of said County, duly elected and qualified, according to law; and that all his official acts as such are entitled to full faith and credit; that his said certificate is in due form of law; that the seal thereto attached is the genuine seal of said Chancery Court, and said Court is a Court of Record.

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Given under my hand at Vicksburg, Mississippi, this 29th day of June, 1905.

W. P. S. VENTRISS, [SEAL.]
Chancellor.

STATE OF MISSISSIPPI, *Warren County:*

Certificate of Clerk to Chancellor.

Chancery Court.

I, J. D. Laughlin, Clerk of said Court, do hereby certify that the Honorable W. P. S. Ventriss, whose genuine signature appears to the annexed and last above certificate of attestation, is now, and was at the date of said certificate the sole presiding Chancellor of the Fourth Chancery District of said State, (including said County of Warren), as therein stated, duly appointed by lawful authority and legally qualified, and that all his acts as such are entitled to full faith and credit, in judicature and thereout, that his said certificate and attestation are in due form of law, and that said Chancery Court is a Court of Record.

In testimony whereof, I have hereto set my hand and seal of said Court at my office in the City of Vicksburg, this 29th day of June, 1905.

J. D. LAUGHLIN, *Clerk,*
By —— ——, *D. C.*

[SEAL.]

The above and foregoing has the following indorsement thereon, to-wit:—79 Equity. Vicksburg Water Works Company *vs.* Mayor & Aldermen of Vicksburg. Copy of Compl'ts Charter—Filed July 1/1905. L. B. Moseley, Clerk. J. H. Short, D. C.

Motion to Set Down for Trial.

In the United States Circuit Court for the Western Division of the Southern District of Mississippi.

No. 79.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The Clerk is hereby directed to set down for final hearing this cause upon the original bill of Complaint and the exhibits
409 thereto, and all other records and proceedings in said cause, and documentary evidence as may be offered on the hearing, the same to be finally heard and determined at the July Term, 1905, of said Court.

DABNEY & McCABE,
For Defendant.

June — 1905.

The above and foregoing has the following indorsement thereon, to-wit: 79 Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Order set down.—Filed July 1, 1905. L. B. Moseley, Clerk. J. H. Short, D. C. Entered Eq. Or. Book page 50.

410 *Order that Cause be Submitted at May Term at Jackson.*

In the Circuit Court of the United States, Western Division of the Southern District of Mississippi, January Term, Eleventh Day of January, 1906.

Equity. 79.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Ordered that this cause stand submitted on final hearing to be further heard at the May term, 1906 of this Court to be held in Jackson, Miss. at the regular term at that place; the decree to be entered in this Court when rendered.

The above and foregoing order appears of record in Minute Book No. 2 at page 169 of the official records of this office.

411 *Objections to Court Entering Judgment.*

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 79.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the Plaintiff in the above styled cause and objects to the Judge of this Court signing the decree dated the 3rd day of July, 1905, as "Final Decree" in this cause, because this Court has already and finally adjudged this case and decreed this case on the 24th day of February, 1905, and cannot now sign any other or further decree in this cause at this stage of the pleadings.

Because this Court can render no final decree in this controversy now.

Because this Court cannot now sign this decree.

HUDSON & FOX,
For Motion.

The above and foregoing has the following indorsement thereon, to-wit: # 79 Vicksburg Water Works Company *vs.* Mayor & Al-

dermen of Vicksburg, Miss.—Objections to Court entering Judgment. Filed & Ent'd L. M. D. No. 1 p. 24 Jan. 24, 1906 L. B. Moseley, Clerk J. H. Short, D. C. 2 folios.

Defendant's Motion to Set Aside Order of Jan'y 11th, 1906.

79.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI.

Motion by defendant to set aside the order entered herein on the 11th day of Jan., 1906, taking this case under advisement by consent to be tried at the May term in Jackson, Miss. because the same was made under a misapprehension of the facts.

412

DABNEY & McCABE,
For the Motion.

The above and foregoing has the following indorsement thereon, to-wit: No. 79 Equity. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg. Motion. Filed and Ent'd page 25 Jan. 24 1906 L. B. Moseley, Clerk, J. H. Short, D. C.

Order Setting Aside Order to Take under Advisement.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day on motion of the Mayor & Aldermen of the City of Vicksburg, the defendants herein, it is ordered that the decree heretofore entered herein, at the present term taking this cause under advisement to be heard at the May term 1906, of this Court in Jackson, Miss., be and the same is hereby set aside, the same having been entered under a misapprehension as to the then status of the case.

Ordered, adjudged and decreed this the 24th day of January, 1906.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit: 79 Equity—Vicksburg Water Works Company *vs.* Mayor & Aldermen of Vicksburg.—Order setting aside Order to take under advisement. Filed and entered M. B. 2 page 178 Jan. 24, 1906. L. B. Moseley, Clerk. J. H. Short, D. C. (1 folio.)

413 *Final Decree.*

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

Equity. No. 79.

VICKSBURG WATERWORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This cause coming on to be finally heard at this Jan'y Term, 1906 of this Court, upon the original bill of complaint and the answer of the defendant thereto, and all the exhibits which are made such, to said original bill of Complaint and said answer, and all of the other pleas and proceedings in this cause, together with a certified copy of the charter of the said Vicksburg Water Works Company, which is filed in the record as evidence in the cause, also the petition of the defendant for a modification of the temporary injunction granted in this cause, so that the complainant shall not be authorized to cut off water from its patrons who refuse to pay the rates of complainant, claiming the right to have the injunction modified by virtue of the ordinances of the defendant, fixing water rates; and the motion of Complainant to have said injunction granted heretofore made perpetual. And the Court having heard the arguments of counsel, and being fully advised in the premises, and being satisfied that the Complainant is entitled to the relief prayed for in its bill of complaint for full relief, it is thereupon finally ordered, adjudged and decreed:

First. That the defendant, the Mayor & Aldermen of the City of Vicksburg, be and is hereby denied the relief prayed for in its petition, to-wit, that the injunction be modified so that the Mayor & Aldermen of the City of Vicksburg shall not be restrained from enforcing the ordinances passed by them fixing the water rates and prescribing rules and regulations of the Vicksburg Waterworks Company, and that the Vicksburg Waterworks Company shall not be permitted to cut off patrons' water provided patrons pay the rates fixed in said ordinances.

Second. That said defendant be and is hereby enjoined from enforcing the said three ordinances described in said bill to-wit: An ordinance entitled "An Ordinance to fix and prescribe maximum rates and charges for water supplied to the inhabitants of the City of Vicksburg whether measured by meters, and for other pur-
414 poses," approved the 20th of April, 1904 an ordinance entitled "An Ordinance to fix and prescribe the maximum flat rates and charges for the supply of water to consumers in the City of Vicksburg, and for other purposes," approved the 20th day of April, 1904: and an ordinance entitled "An Ordinance to require water works, gas and electric companies to present bills before charg-

ing damages for a failure to pay them when due," approved the 8th day of December, 1903, so far as the latter relates to Complainant.

That the restraining order heretofore granted in this cause on the 11th day of January, 1905 be and the same is hereby made permanent.

Fourth. That the said defendant be and is hereby enjoined from in any manner interfering with complainant's contract rights under its said contract with the City of Vicksburg entered into between Samuel R. Bullock & Company and said City under the ordinance of November 19th, 1886.

Fifth. That the defendant be and is hereby enjoined from interfering with the rules and regulations of Complainant, the Vicksburg Waterworks Company, and the water rates for the inhabitants of the City of Vicksburg now in force established by the Vicksburg Waterworks Company.

Sixth. That said defendant be and is hereby enjoined from interfering with the water rates known as the flat rates now in force established by the Vicksburg Waterworks Company.

It is further ordered, adjudged and decreed that the defendant pay all costs of this cause.

Finally ordered adjudged and decreed this the 3rd day of Jan. A. D. 1906.

H. C. NILES, *Judge.*

The foregoing has the following indorsement thereon, to-wit: No. 79 Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg. Filed and ent'd 8 folios M. B. 2 p. 177 & 178. Jan. 24, 1906. L. B. Moseley, Clerk, J. H. Short, D. C.

415 *Petition for Appeal.*

In the Circuit Court of the United States for the Western Division of the Southern *Division* of the State of Mississippi

79.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Petition for Appeal.

To the Honorable H. C. Niles, Judge of said Court:—

Your petitioner, the Mayor & Aldermen of the City of Vicksburg, a municipal corporation respectfully shows unto your Honor that on the 24th day of February, 1905, your Hon*pr* rendered an interlocutory decree in the above stated cause, dated the day and year aforesaid, substantially as follows:

"First. That the defendant, the Mayor & Aldermen of the City of Vicksburg, be and is hereby denied the relief prayed for in its

petition, to-wit that the injunction be modified so that the Mayor & Aldermen of the City of Vicksburg shall not be restrained from enforcing the ordinances passed by them fixing the water rates and prescribing the rules and regulations of the Vicksburg Water Works Company, and that the Vicksburg Water Works Company will not be permitted to shut off patrons' water provided patrons pay the rates fixed in the said ordinances.

Second. That said defendant be and is hereby enjoined from enforcing the said three ordinances described in said bill, to-wit: An Ordinance entitled "An Ordinance to fix and prescribe maximum rates and charges for the water supplied to the inhabitants of the city of Vicksburg, whether measured by meters, and for other purposes; approved the 20th day of April, 1904; an ordinance entitled 'An Ordinance to fix and prescribe maximum flat rates and charges for the supply of water to consumers in the City of Vicksburg, and for other purposes; approved the 20th day of April, 1904; and an ordinance entitled 'An ordinance to require water works, gas and electric light Companies to present bill before charging damages for a failure to pay them when due,' approved the 8th day of December 1903, so far as the latter relates to Complainant.

Third. That the restraining order heretofore granted in this cause on the 11th day of January, 1905, be and the same is hereby made permanent.

Fourth. That said defendant be and is hereby enjoined from in any manner interfering with complainant's contract rights under the said contract with the city of Vicksburg entered into between
416 Samuel R. Bullock & Company and said city under the ordinance of November 19th, 1886.

Fifth. That the defendant be and is hereby enjoined from interfering with the rules and regulations of Complainant, the Vicksburg Water Works Company, and the water rates for the inhabitants of the City of Vicksburg now in force established by the Vicksburg Water Works Company.

Sixth. That said defendant be and is hereby enjoined from interfering with the water rates known as "flat rates," now in *of*free established by the Vicksburg Water Works Company."

That on the third day of January, 1906 your Honor rendered a final decree in this cause, substantially to the effect following:

First. That the defendant, the Mayor & Aldermen of the City of Vicksburg be and is hereby denied the relief prayed for in its petition, to-wit, that the injunction be modified so that the Mayor & Aldermen of the City of Vicksburg will not be restrained from enforcing the ordinances passed by them fixing the water rates and prescribing rules and regulations of the Vicksburg Water Works Company, and that the Vicksburg Water Works Company shall not be permitted to cut off patrons' water provided patrons pay the rates fixed in said ordinances.

Second. That said Defendant be and is hereby enjoined from enforcing the said three ordinances described in said bill, to-wit:

An ordinance entitled "An Ordinance to fix and prescribe maximum rates and charges for water supplied to the inhabitants of the City of Vicksburg whether measured by meters and for other purposes: approved the 20th day of April, 1904; and ordinance entitled "An Ordinance to fix and prescribe maximum flat rates and charges for the supply of water to the consumers in the city of Vicksburg, and for other purposes," approved the 20th day of April, 1904, and an ordinance entitled "An ordinance to require water works, gas and electric light companies to present bills before charging damages for a failure to pay them when due," approved the 8th day of December, 1903, so far as the latter relates to complainant.

Third. That the restraining order heretofore granted in this cause on the 11th day of January 1905 be and the same is hereby made perpetual.

Fourth. That said defendant be and is hereby enjoined from in any manner interfering with complainant's contract rights under its said contract with the City of Vicksburg entered into between Samuel R. Bullock & Company and said City under the ordinances of November 19th, 1886.

Fifth. That the defendant be and is hereby enjoined from
417 interfering with the rules and regulations of Complainant, Vicksburg Water Works Company, and the water rates for the inhabitants of the City of Vicksburg now in force established by the Vicksburg Water Works Company.

Sixth. That said defendant be and is hereby enjoined from interfering with the water rates known as "flat rates," now in force established by the Vicksburg Water Works Company.

It is further ordered, adjudged and decreed that the defendant pay all costs of this cause."

Your petitioner further shows that it is of opinion that the Court erred in rendering each of said decrees and paragraph and provision thereof, and they are dissatisfied with said decree and each paragraph and provision thereof and prays for an appeal to the next term of the Supreme Court of the United States, in order that said decrees and each of them and each and every paragraph and provision thereof may be reviewed by that Court and that right and justice may be done in the premises.

Your petitioner further shows that it has filed an assignment of errors in the manner provided for by law and the rules of the Supreme Court, which assignment of errors set out the various grounds of error complained of by your petitioner, and upon which it will rely in the Supreme Court of the United States, and your petitioner herewith tenders an appeal bond, conditioned according to law, in the sum of One Thousand Dollars, with the Title Guarantee & Trust Company of Scranton, Penn., as surety, which it asks shall be received and approved and its appeal granted. And as in duty bound your petitioner will ever pray, etc.

DABNEY & McCABE,
Solicitors for Respondent.

The above and foregoing has the following indorsement thereon, to-wit: No. 79. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg.—Petition for Appeal. Filed and ent'd March 22, 1906. L. B. Moseley, Clerk. J. H. Short, D. C.

418 *Assignment of Errors.*

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & *Mayor* & ALDERMEN OF THE CITY OF VICKSBURG, a Municipal Corporation, Defendant.

Assignment of Errors.

Now comes the defendant, the Mayor & Aldermen of the City of Vicksburg a municipal corporation, and files the following assignments of error to the action of the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, in making and rendering the final decree in this cause, rendered herein on the 3rd day of January, 1906, and in rendering the interlocutory decree rendered herein on the 24th day of February, 1905 upon which assignments of error the said defendants will rely on the appeal in this cause in the Supreme Court of the United States.

Assignments of Error to the Action of the Court in Rendering said Final Decree January 3, 1906.

I.

The said Court erred in deciding and rendering a final decree in this cause in favor of the Complainant, the Vicksburg Water Works Company.

II.

The said Court erred in final hearing of this cause January 3rd, 1906, in not deciding said cause in favor of the Defendant, the Mayor & Aldermen of the City of Vicksburg, and in not dismissing Complainant's original bill of Complaint in this cause filed by it, and in not dissolving in toto the injunction theretofore granted in said cause.

III.

The said Court erred in enjoining and making perpetual the injunction theretofore granted and issued in said cause, restraining defendant from enforcing the ordinance enacted and adopted by the defendant, mentioned and described in the original bill of Complaint herein filed, namely: an ordinance entitled "An ordinance to fix and prescribe maximum rates and charges for water supplied to the inhabitants of the City of Vicksburg, whether measured by meters or not, and for other purposes, approved the 20th day of April, 1904.

IV.

The said Court erred in enjoining and making perpetual the injunction theretofore granted and issued in said cause, restraining defendant from enforcing the ordinance enacted and adopted by the defendant, mentioned and described in the original bill
419 of Complaint herein filed, namely: an ordinance entitled "An ordinance to fix and prescribe maximum flat rates and charges for the supply of water to the consumer in the City of Vicksburg, and for other purposes, approved the 20th day of April, 1904."

V.

The said Court erred in enjoining and making perpetual the injunction theretofore granted and issued in said cause, restraining defendant from enforcing the ordinance enacted and adopted by the defendant, mentioned and described in the original bill of Complaint herein filed, namely: an ordinance entitled an "ordinance to require water works gas and electric Light Companies to present bills before charging damages for failure to pay them when due, approved the 8th day of December 1903, so far as the latter relates to Complainant.

VI.

The said Court erred in enjoining and making perpetual the injunction hereinbefore granted restraining defendant from enforcing each and every one of the several ordinances passed and adopted by said board of Mayor & Aldermen, which are set out and described in full in Complainant's original bill of Complaint.

VII.

The said Court erred in making the restraining order granted on the 11th day of January, 1905, in this cause perpetual, as set out in the third paragraph of said final decree.

VIII.

The said court erred in enjoining defendant from in any manner interfering with Complainant's alleged contract rights under its alleged contract with the city of Vicksburg entered into between Samuel R. Bullock & Company and said City of Vicksburg under the ordinance of November 19th, 1886, as set out in the fourth paragraph of said final decree.

IX.

The said Court erred in decreeing that the defendant be enjoined from interfering with the rules and regulations of Complainant, the Vicksburg Water Works Company, as set forth in the first portion of paragraph five of said final decree.

X.

The said Court erred in decreeing that the defendant be enjoined from interfering with the water rates for the inhabitants

of the City of Vicksburg now in force established by the Vicksburg Water Works Company as set out in paragraph five of said final decree.

XI.

The said Court erred in decreeing that the defendant be enjoined from interfering with the water rates known as "flat rates"
420 now in force established by the Vicksburg Water Works Company.

XII.

The said Court erred in holding deciding and decreeing in effect that the Mayor & Aldermen of the City of Vicksburg of November 19th, 1886, granting to Samuel R. Bullock & Company the right to construct and operate water works in the City of Vicksburg to supply the said City and its inhabitants with water was and contained such a contract with said city as that the Mayor & Aldermen could not lawfully adopt and enforce all and each or any one of the three ordinances passed and adopted by said City regulating the rates to be charged by complainant for the water furnished to the inhabitants of said city and other persons, and prescribing rules and regulations for said Company, set out and described in the original bill of Complaint in this cause.

XIII.

The said Court erred in holding that the contract rights and franchises of Samuel R. Bullock & Company acquired under and by virtue of the ordinance of the said Mayor & Aldermen of November *the* 19, 1886, authorizing Samuel R. Bullock & Company, their successors and assigns, to construct and operate water works to supply water to the City of Vicksburg and its inhabitants, became and are vested in the Complainant, the Vicksburg Water Works Company, and may be asserted by it against the defendant.

XIV.

The said Court erred in holding, deciding and decreeing in effect that the adoption and enforcement of all three and each or any of the said ordinances of the said defendant set out and copied in the original bill of complaint in this cause, was in violation of and in conflict with any rights the complainant acquired under or by virtue of said ordinance of November 19, 1886, of the said Defendant, the Mayor & Aldermen of the City of Vicksburg and was in conflict with Section Ten, Article I, of the Constitution of the United States, wherein it is provided that no state shall pass any law impairing the obligation of a contract.

XV.

The said Court erred in holding deciding and decreeing in *affect* that the Complainant, the Vicksburg Water Works Company, had any right, privileges or franchises under and by virtue of said

ordinance of November 19th 1886, passed and adopted by the said Mayor & Aldermen of the City of Vicksburg.

XVI.

The said Court erred in *hold-*, deciding and decreeing in effect that the rights and franchises of Samuel R. Bullock & Com-
421 pany their associates, successors and assigns, of erecting, maintaining and operating a system of water works in the City of Vicksburg, acquired under and by virtue of the ordinance of said Mayor & Aldermen of the City of Vicksburg, enacted and adopted in November 1886 authorizing by section thirteen thereof the maximum of fifty cents per thousand gallons for water furnished passed from the Vicksburg Water Supply Company by its sale to the Complainant or by the sale and foreclosure under the deed of trust made by that Company, and that it was acquired and owned by the Complainant, the Vicksburg Water Works Company.

XVII.

The said Court erred in holding, deciding and decreeing in effect that the act of the Legislature of Mississippi, of March 18th, 1886, amending the charter of the City of Vicksburg, contained in the Laws of the State of Mississippi of 1886, at page 694, vested in the Mayor & Aldermen of said City the right and power to make a contract with Samuel R. Bullock & Company, their associates, successors and assigns, whereby to deprive the said Mayor & Aldermen of said City of the governmental power to fix and prescribe maximum rates of charge for water to be supplied to its inhabitants, or to fix and prescribe reasonable rules and regulations for the government and conduct of the persons who should own and operate said water works erected and operated under said Cont*ar*et.

XVIII.

The said Court erred in holding and decreeing in *a*ffect that the act of the Legislature of the State of Mississippi, Approved March 19th, 1904 entitled "An act to enable Cities, towns and villages incorporated under general or special laws of this state, to fix the rates and charges for the supply of water, electric lights or gas furnished by any individual, company or corporation to any such city, town or village and the inhabitants thereof," contained *o*n the Laws of Mississippi of 1904, at page 231, did not have the effect to authorize defendant to enact all, each or any one of the three ordinances set forth, copied and described in Complainant's original bill of complaint filed in this cause, by which to fix maximum rates and charges for water to be furnished by complainant, and otherwise fixing rules and regulations of complainant's business as a water supply Company.

XIX.

The said Court erred in Holding and decreeing in effect that defendant did not have authority to enact and enforce all three ordi-

nances enacted and adopted by it, set out, described and copied
422 in complainant's original bill of complaint filed in this cause.

XX.

The said Court erred in holding in effect that the said act of the Mississippi Legislature of March 19th, 1904 (Laws of Miss. 1904, page 231) and the two ordinances of the Mayor & Aldermen of the City of Vicksburg, approved April 20th, 1904, set out and described in the original bill of complaint in this cause, were in conflict with and in violation of Section 10 of Article I. of the Constitution of the United States, wherein it is provided that no state shall pass any law impairing the obligation of a contract.

XXI.

The said Court erred in adjudging and decreeing that the defendant pay all the costs of this cause.

Assignment of error to the action of the Court in rendering the decree in this cause of and on the 24th day of February, A. D. 1905.

I.

The said Court erred in rendering said interlocutory decree before the replication was filed and the issue joined on the answer of defendant.

II.

The said Court erred in overruling, and denying the relief prayed for in, the petition filed by the defendant, asking a modification of the temporary injunction which had been granted in this cause on Jan. 11th, 1905.

III.

The said Court erred in granting and decreeing the injunction restraining the defendant from enforcing all or any one of the three ordinances passed and adopted by the Mayor & Aldermen of the City of Vicksburg, set out, described and copied in the original bill of Complaint in this cause.

IV.

The said Court erred in holding in effect that Section 13 of the Ordinance of November, 1886, of the Mayor & Aldermen of the City of Vicksburg, set out and referred to in the pleadings in this cause, constituted a contract between the city of Vicksburg and Samuel R. Bullock & Company, their associates, successors and assigns, authorizing them to charge a maximum rate of 50 cts. per thousand gallons for water furnished to the inhabitants of the city of Vicksburg, and that the City of Vicksburg had no power or authority by reason of that fact to adopt said ordinances regulating and prescribing rates to be charged by complainant for water furnished to said inhabitants.

423 V.

The said Court erred in holding in effect that the said section 13 of said Ordinance of November, 1886, was such a contract as that,

under section 10, Article 1, of the Constitution of the United States, the Legislature of the State of Mississippi and the Mayor & Aldermen of the City of Vicksburg, acting under the authority thereof, had no power to prescribe the rules and regulations of, and the maximum rates of charges for water by, said Complainant company.

VII.

That the said Court erred by said decree of Feb. 24th, 1905, in decreeing and continuing the injunction or restraining order in this cause granted on the 11th day of January, 1905.

In order therefore that the foregoing assignment of errors may be and appear of record, the respondent presents the same to the Court, and prays that such disposition be made thereof as in accordance with law and the Statutes of the United States in such cases made and provided, and that upon hearing the said final decree may be reversed and said cause remanded.

All of which is respectfully submitted,

DABNEY & McCABE,
Sol's for Respondent (Appellant).

424 The above and foregoing has the following indorsement thereon, to-wit:—No. 79.—Vicksburg Water Works Com. *vs.* Mayor & Aldermen of the City of Vicksburg. Assignment of Errors. Filed and ent'd Mar. 22, 1906. L. B. Moseley, Clerk. J. H. Short, D. C.—(Dabney & McCabe, Attorneys at Law, Vicksburg, Miss.)

Order Allowing Appeal.

No. 79.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKBURG.

Order Allowing Appeal.

Coming on this day to be heard at Chambers the petition of the Mayor & Aldermen of the City of Vicksburg, a municipal corporation, respondent in the above styled cause, praying for an appeal to the Supreme Court of the United States from the final decree made and entered in said cause on the 3rd day of January, 1906, and the interlocutory decree rendered in said cause on the 24th day of February, 1905; and the Court having read and considered said petition:

It is now ordered, adjudged and decreed that the said petition be granted upon the said respondent entering into a bond in the sum of $1,000.00 payable to the Vicksburg Water Works Company, complainant in this cause, conditioned to pay and satisfy whatever decree may be rendered against the said Mayor & Aldermen of the City of Vicksburg by the Supreme Court of the United States; and the respondent having tendered a bond in the sum of $1,000.00 conditioned

according to law and this order, with the Title Guarantee & Trust Company of Scranton, Pa., as surety, and the Court being satisfied with the form of said bond and the solvency of the surety:

It is now ordered that said bond be and the same is hereby approved and accepted, and the appeal prayed for in said petition be and the same is hereby granted.

It is further ordered that citation issue to the Complainant — be and appear before the Supreme Court of the United States on the — day of October, 1906, to show cause, if any it can, why the decree of this Court above described should not be reversed and the cause remanded.

Ordered, adjudged and decreed in vacation this the 26th day of March A. D. 1906.

H. C. NILES, *Judge.*

The above and foregoing has the following indorsement
425 thereon, to-wit:—No. 79.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg—Order Approving Bond and Granting Appeal. Filed and ent'd Mar. 27, 1906. L. B. Moseley, Clerk, J. H. Short, D. C.

Appeal Bond.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

79.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Know all men by these presents that we, the Mayor & Aldermen of the City of Vicksburg, a municipal corporation, as principal, and the Title Guarantee & Trust Company of Scranton, Penn. a surety company, as surety, are held and firmly bound unto the above named Vicksburg Water Works Company in the sum of One Thousand Dollars, to be paid to the said Vicksburg Water Works Company, as its interest may appear, which payment well and truly to be made we bind ourselves, jointly and severally, and our and each of our successors and assigns, jointly, by these presents sealed with our seals and dated this the 21st day of March, 1906.

The condition of the foregoing obligation is such that whereas the above named respondent, the Mayor & Aldermen of the City of Vicksburg, a municipal corporation, has prosecuted its appeal to the Supreme Court of the United States to reverse a final judgment and decree rendered in the above entitled cause by the said circuit court of the United States for the Western Division of the Southern District of Mississippi, which final decree is dated January 3rd, 1906, and also to reverse an interlocutory decree of said Court rendered in the above stated cause by said Court on the 24th day of February, 1905:

Now, therefore, the condition of this obligation is that if the above named Mayor & Aldermen of the City of Vicksburg shall prosecute its appeal with effect and shall abide by and perform the decree of the Supreme Court in the premises, and shall answer all costs and damages that may be adjudged or awarded against it if it shall fail to make good its appeal, then this obligation shall be void; otherwise, it shall remain in full force and virtue.

Witness our signatures this the day and date first above written.

THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG,
By B. W. GRIFFITH, *Mayor.*

426 THE TITLE GUARANTEE & TRUST CO. OF SCRANTON, PENN., [SEAL.]
By PAXTON & O'NEIL, *Agents, &*
BRYSON & DABNEY, *Att'ys.*

Approved March 26th, 1906.
H. C. NILES, *Judge.*

The above and foregoing has the following indorsement thereon, to-wit:—No. 79. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Appeal Bond. Filed and ent'd Mar. 27 1906 L. B. Moseley, Clerk, J. H. Short, D. C.—(Dabney & McCabe, Attorneys at Law, Vicksburg, Miss.)

427 *Citation and Return Thereon.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Vicksburg Water Works Company of Vicksburg, Mississippi, and Messrs. Hundson & Fox, its attorneys, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in the City of Washington, District of Columbia, within thirty days of the date of this writ, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United — for the Western Division of the Southern District of Mississippi, in the case of the Vicksburg Water Works Company, plaintiff, *vs.* the Mayor & Aldermen of the City of Vicksburg, No. 79 on the dockets of said Court, and you are defendant in error, to show cause if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this the 10th day of April, 1906, and of the Independence of the United States the one hundred and thirtieth.

H. C. NILES,
United States District Judge Presiding in said Circuit Court.

Attest:
L. B. MOSELEY, *Clerk.* [SEAL.]
By J. H. SHORT, *D. C.*

Return.

The above writ has the following return thereon, to-wit: "I have this day personally executed this citation upon the Vicksburg Water Works Company, and handed and delivered to M. O. Crumpler Superintendent and General Manager a true and perfect copy thereof and informed him of the contents of this writ.

EDGAR S. WILSON, *Marshal,*
By E. C. YELLOWLEY, *Deputy.*

This the 10th day of April, A. D. 1906.
Fees $2.00.

The above and foregoing has the following indorsement thereon to-wit:—No. 79. U. S. C'r't Ct. W. Div. So. Dist. of Miss.—Vicksburg Water Works Co. *vs.* the Mayor & Aldermen of the City of Vicksburg.—Citation.—Return executed, filed and ent'd Apr. 11, 1906. L. B. Moseley, Clerk. J. H. Short, D. C.—Dabney & McCabe, Att'ys.

428 *Affidavit of S. S. Hudson.*

No. 79.

STATE OF MISSISSIPPI, *Warren County:*

In the United States Circuit Court *of* the Western Division of the Southern District Thereof.

THE VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF VICKSBURG.

Affidavit of S. S. Hudson.

This affidavit is filed by agreement of both sides.

Personally appeared before me the undersigned Clerk of said Court one, S. S. Hudson, who first being duly sworn states upon oath, that at the January term 1905, of said Court the Water Company filed an ancillary motion in Equity Suit No. 41 on the same docket to fine the Mayor & Aldermen for contempt in passing the rules and rates of charges set out in Bill No. 79 & on Saturday the 7th Jan'y 1905, the Court considered the matter & in the presence of Messrs. Hudson & Hirsh as Counsel for the Company and Messrs. Dabney & McCabe as counsel for the City announced that he thought the best way to reach the wrong, would be by bill & a request for an injunction; after this remark counsel for the Co., then stated it would file the bill that evening which it did & then and there had it filed but no summon was issued and none ordered issued; When the Court returned Monday following the 9th, & opened Court that

morning Mr. Hudson obtained the bill and handed it to the Court, about one hour afterwards Mr. Dabney appeared and informed the Court that he understood such a bill had been filed and he desired to be heard before the Court passed upon the matter; On Thursday following the Court summoned the Counsel for both sides and said he did not care to hear arguments now in the case, and he had decided to grant the temporary restraining order & he would hear counsel at a later date at Kosciusko Miss. and in accordance with that understanding they met the Court there in Feb'y & argued the case. On Monday the 9th of Jan'y, in the evening the Water Co. was served with a summon in the suit of Mayor & Aldermen *vs.* The Water Co. filed in the Chancery Court of Warren County, Miss.

S. S. HUDSON, *Affiant.*

Sworn to and subscribed before me this 12th day of April, 1906.

L. B. MOSELEY, *Clerk.*

[SEAL.] J. H. SHORT, *D. C.*

The above and foregoing has the following indorsement thereon, to-wit:—No. 79. Vicksburg Water Co. *vs.* Mayor & Aldermen of Vicksburg. Filed & Ent'd Apr. 12, 1906. L. B. Moseley, Clerk, J. H. Short, D. C.

429 *Clerk's Certificate.*

Certificate.

I, L. B. Moseley, Clerk of the Circuit Court of the United States, in the Fifth Circuit and the Southern District of Mississippi, do hereby certify that the above and foregoing, is a full, true and correct transcript of the record, assignments of error and all the proceedings had in cause No. 79, in Equity, wherein the Vicksburg Water Works Company is Complainant and The Mayor and Aldermen of the City of Vicksburg is Defendant, as fully as the same remains on file and of record in my office at Vicksburg, in said District.

Witness my official signature and the seal of said Court, at Vicksburg, in said Division of said District, on the 12th day of April, A. D. 1906.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*
J. H. SHORT,
Deputy Clerk.

Endorsed on cover: File No. 20,226. S. Mississippi C. C. U. S. Term No. 275. The Mayor & Aldermen of the city of Vicksburg, appellant, *vs.* Vicksburg Water Works Company. Filed April 27th, 1906. File No. 20,226.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 79.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable the Judges of the United States Circuit Court for the Western Division of the Southern District of Mississippi:

The petition of the Defendant in the above entitled cause, by its solicitors, comes and shows to the Court that it has not been summoned in this cause, and that no subpœna has been issued for it; that the original bill in this cause was marked filed January 7th, 1905, and withdrawn from the files until after the 9th day of January, 1905.

That a temporary injunction was granted by this Court in this cause, on the 11th day of January, 1905, restraining the defendant from enforcing the ordinances complained of in said original bill. Your petitioner shows that said injunction was intended to be temporary, with a view to leaving the matters as between the Complainant and the defendant, in respect to water supplied to consumers of water in Vicksburg by the complainant, as they were at the time and immediately before said injunction was granted, said injunction being intended as temporary only and to hold until this Honorable Court should have time to hear argument and decide whether an injunction should be granted in this matter.

Your petitioner shows that the said Complainant, acting upon said temporary injunction and without waiting for the matter to be considered and argued before the Honorable H. C. Niles, one of the Judges of said Court has issued a circular, notifying all of the patrons of said company who have not paid up rates according to the demands of the Complainant which are in dispute, that unless they shall pay up the said demands the said Complainant will cut off the water from their premises, and refuse to let them have any water supplied to them by it.

Your petitioner shows that great harm and injustice and irreperable injury will result to Complainant's patrons thus affected, and very acute conditions are imminent in said city if said threat of the water Waorks Company to cut off the supply of water to said patrons shall be carried out.

Your petitioner shows that in addition to said circular, they have direct information from said Water Works Company that it intends to cut off the water and cease to permit it to be used by the patrons of said Company unless they immediately pay the rates demanded of them by the said Water Works Company, which rates are the subject of dispute between said patrons and said water Works Company, a settlement of which involves the consideration of whether the ordinances passed by said City in April, 1904, fixing water rates

are valid or not; that unless said injunction heretofore granted in this cause shall be modified a very distressing condition will arise and occur in said City be*fre* this Hon*p*rable Court shall have had time to hear argument and pass on the main questions rai-ed by the original bill in this case.

Wherefore, this petitioner respectfully asks and prays your Honor to modify said temporary injunction granted in this case, so that the said water Works Company shall not be authorized to cut off water from its patrons in said city who have refused to pay the rates of the water Works Company, claiming to be right in doing so by virtue of the ordinances of said City fixing water rates, and that said injunction be modified so that in all such cases the said City shall not be restrained from enforcing said ordinances, to prevent said water from being cut off until this Court shall have had time to hear arguments and pass on the main questions raised in said suit, and that Complainant be restrained from cutting off the patrons' water. And if mistaken in the relief prayed for in this case, your petitioner asks your Honor to decree such modification of said injunction as to you may seem meet and proper.

(Signed) B. W. GRIFFITH,
Mayor of Vicksburg.

Sworn to and subscribed before me this the 25th day of January, 1905.

J. M. PHILLIPS,
Notary Public. [SEAL.]

DABNEY AND McCABE,
Sol's for P ft.

Vicksburg Water Works Company.

VICKSBURG, MISS., *January* 17, 1905.

The United States Court, on May 18th, 1904, rendered a decree and granted an injunction against the Mayor and Aldermen of Vicksburg, as follows:

"That the defendants, the Mayor and Aldermen of the City of Vicksburg be and *is* hereby perpetually enjoined from abrogating and taking away, or from assuming to abrogate or take away the franchise or contract rights of said defendants entitled "An Ordinance to Provide for a Supply of Water to the City of Vicksburg in Warren County, Mississippi, and to its Inhabitants Contracting with Samuel R. Bullock & Company, their Associates, Successors and Assigns for a supply of Water."

"That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts, or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by complainant thereunder."

And on January 12th, 1905, granted a restraining order enjoining defendant from in any manner interfering with the rules and regulations of complainant, and water rates for the inhabitants of defendant now in force established by the Vicksburg Water Works Company and in any other manner interfering with complainant's contract rights; and that defendant is hereby restrained from enforcing the ordinances passed by it as set out in complainant's bill (the ordinances of April 21st, 1904)."

We beg leave to notify you of the court's decree and restraining order, and request that you please call and settle your account.

We have waited patiently for nearly two years, and we must, in justice to our business, request you to pay up now; or we will have no other alternative but to shut off your water and take action to collect the account, although we would extremely regret to be compelled to take such action, for we wish to maintain most amicable relations with our patrons.

VICKSBURG WATER WORKS CO.

The within paper was inadvertently left out of the record prepared for the U. S. Supreme Court, in the case of the Mayor and Aldermen of the City of Vicksburg *vs.* Vicksburg Water Works Company—No. 275—on the Supreme Court Docket, of Oct. term 1906, and we hereby agree that it may now be printed and made a part of said record.

This Jan'y 24, 1907.

MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, *Appellants,*
By GEO. ANDERSON, *Att'y.*
MURRAY F. SMITH,
J. HIRSH,
Att'ys for Appellee.

275, 20,226.

[Endorsed:] File No. 20,226. Supreme Court U. S. October Term, 1906. Term No. 275. The Mayor & Aldermen of the City of Vicksburg *vs.* Vicksburg Water Works Co. Stipulation and addition to record. Filed Feb'y 4", 1907.

FILE COPY.

Supreme Court of the United States.

October Term, 1906.

No. 275.

Office Supreme Court, U. S.
FILED.
APR 17 1907
JAMES H. McKENNEY
Clerk

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Appellants,

vs.

VICKSBURG WATER WORKS COMPANY.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

GEORGE ANDERSON,
HANNIS TAYLOR,
Counsel for Appellants.

Press of Gibson Brothers,
Washington, D. C.
1907.

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 275.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, *Appellants*,

v.

VICKSBURG WATERWORKS COMPANY.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

STATEMENT OF THE CASE.

After two appeals involving preliminary and incidental questions the case is now, for the first time, presented on its merits. As the composition of the court has changed during the progress of the litigation, a more complete statement must be made of the antecedents than would have otherwise been necessary. An effort will be made so to state the cardinal questions presented by each of the appeals that the court may see at a glance the precise subject-matter involved in each of the three records.

The First Appeal Involved only a Question of Jurisdiction.

In Vicksburg Waterworks Company *v.* Vicksburg, 185 U. S. 65, the case was thus stated by this court: "By an act of legislature of the State of Mississippi, approved on the 18th day of March, 1886, the city of Vicksburg was authorized 'to provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties who shall build and operate waterworks.'

"The city received competitive bids for the construction and maintenance of said waterworks, and on November 18, 1886, at a special meeting of the board of mayor and aldermen, a committee reported that a bid made by Samuel R. Bullock and Company, of New York, was the best bid, and submitted the draft of an ordinance, entitled 'An ordinance to provide for a supply of water to the city of Vicksburg, in Warren County, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock and Company, their associates, successors and assigns, for a supply of water for public use, and giving the city of Vicksburg an option to purchase said works.' This ordinance was then adopted in terms as follows:

"'Sec. 1. That in consideration of the public benefit to be derived therefrom, the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect, unto Samuel R. Bullock and Company, their associates, successors and assigns, of erecting, maintaining and operating a system of waterworks in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares, and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended, and within such other territory as may be now or hereafter be extended, and within such other territory as may now or hereafter be under its jurisdiction, for the purpose of laying pipes, mains and other conduits, and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

"'The said Samuel R. Bullock and Company, their associates, successors and assigns, shall exercise the greatest care

and diligence in the use of the said streets, alleys, public squares and other public places, and shall cause no unnecessary obstruction of, or interruption to, the public travel over or upon the same, or any injury to or interference with any pipes, mains, sewers, which may now be lawfully located beneath the surface there of.

"'The said Samuel R. Bullock and Company, their associates, successors and assigns, shall take every precaution to provide against danger to property, life and limb by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night, and after the completion of the purposes for which the said streets, alleys, public squares and other public places may be used, they shall be restored to their former condition as near as may be without unnecessary delay, and they shall at their own cost and expense relay their mains and pipes made necessary by a change of grade in any street ordered by the board of aldermen of said city if there was no established grade for such street at the time said mains and pipes were laid. On failure to restore said streets, alleys, public squares and other places as aforesaid, the mayor and aldermen of the city of Vicksburg may, on reasonable notice to them by any city officer, cause the same to be restored and recover the costs and expenses thereof from the said Samuel R. Bullock and Company, their associates, successors and assigns, in any court having jurisdiction of the amount.

"The said Samuel R. Bullock and Company, their associates successors and assigns, hereby agree to hold the mayor and aldermen of the city of Vicksburg harmless from any liability which may result to it by reason of any violation of this section.

"'Sec. 2. The general plan of the said system of waterworks shall be as follows:

"'*Mains.* The pipe system shall consist of not less than twelve (12) miles of mains of sizes varying from sixteen inches (16) to six (6) inches in diameter. The pipe used shall be of the best quality of cast iron pipe and each pipe shall be tested at its place of manufacture to a pressure of three hundred (300) pounds to the square inch. All pipe shall be coated with Dr. Angus Smith's preservative varnish, and shall be laid and jointed by competent mechanics and in the best possible manner.

"'The streets along which and at what points said mains shall be laid shall be first designated by the board of mayor and aldermen of the city of Vicksburg.

"'*Hydrants*. The hydrant shall be double-nozzle fire hydrants with nozzles fitted to connect with the hose couplings now in use by the fire department of said city of Vicksburg.

"'The board of mayor and aldermen of the city of Vicksburg shall within thirty (30) days from the date of the final passage of this ordinance designate the points on the line of distributing mains at which the hydrant shall be erected.

"'*Gates and valves*. All the necessary gates and valves shall be provided and located at such points on the lines of mains as will enable certain districts to be cut off and isolated when repairs are needed without depriving other districts of their full supply.

"'*Pumps*. The pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours against the pressure needed to supply all parts of the pipe system with an abundant supply of water. They shall be so arranged as to be operated separately or together.

"'*Boilers*. The boilers shall be of ample capacity to operate the pumping engines and shall be so arranged as to be operated separately or together as may be required.

"'*Stand-pipe*. There shall be a stand-pipe or reservoir of sufficient capacity and height or elevation to furnish an ample supply of water for consumption at the highest points along the line of the mains.

"'*Pump-house*. The pumps and boilers house shall be a substantial stone or brick building of ample size for the pumps and batteries of boilers.

"'*Source of supply*. The water shall be taken from such points as may be free from all sewerage contamination, and shall be good, wholesome water fit for all purposes of domestic or manufacturing consumption.

"'Sec. 3. In consideration of the public benefit and the protection to property resulting from the construction of the said system of waterworks, the mayor and aldermen of the city of Vicksburg hereby rent to the said Samuel R. Bullock and Company, their associates, successors and assigns, not less than eighty (80) double-nozzle frost-proof fire hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five ($65) dollars for each hydrant, to be payable semi-annually on the 15th days of January and July. After the first year of the operation of said waterworks the said city hereby rents not less than ten (10) hydrants in addition to said eighty (80) for the unexpired period of said

thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five ($65) dollars payable as aforesaid and for the remainder of said period of thirty years unexpired at the time of placing each of said hydrants.

"'The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg, shall be at the annual rate of fifty (50) dollars for each hydrant, payable as aforesaid, during the unexpired period of the said original term of thirty (30) years. Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters only, provided that for fire practice and flushing sewers no more than two hydrants shall at opened be one time and not more than once in each week.

"'Sec. 4. Water shall be furnished free of charge to the public schools, and all other buildings used exclusively for city purposes, and for filling public cisterns, and the city hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid within seven hundred and fifty (750) feet of said hospital. And water shall also be supplied free for six (6) drinking fountains with openings for man and beast and one public fountain to be erected by the said Samuel R. Bullock and Company, in such place on the line of mains as the board of mayor and aldermen of the city of Vicksburg may direct.

"'Sec. 5. That said Samuel R. Bullock and Company, their associates, successors or assigns, may procure the organization of a waterworks corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder. Provided that such assignment shall not invalidate or affect the bond required by section seven (7) hereof and no assignment thereof shall be valid unless such assignee shall in writing to aforesaid board of mayor and alderman accept this ordinance and become bound by its terms and obligations. And the said mayor and board of aldermen shall pass and enact such further and other ordinance and do and perform such other acts, including the repassage of this ordinance, in favor of the said corporation the rights and privileges hereby granted.

"'Sec. 6. Upon the completion of the construction of the said system of waterworks the said Samuel R. Bullock and Company, their associates, successors and assigns, shall

notify the mayor and aldermen of the city of Vicksburg to that effect in writing, and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw four (4) fire streams through one hundred feet and one-half-inch hose and one-inch nozzle from four (4) different hydrants a stream not less than fifty (50) feet high at the highest location on which any such hydrants are located. On the satisfactory performance of this test the said board of mayor and aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

"'Sec. 7. Within fifteen days after the day this ordinance takes effect the said Samuel R. Bullock & Company, their associates, successors or assigns, shall file their written acceptance thereof, binding themselves to its terms and obligations, in the office of the city clerk, accompanied by their bond in the penal sum of ten thousand (10,000) dollars with two or more sufficient sureties to be approved by said board of mayor and aldermen executed to the mayor and aldermen of the city of Vicksburg and conditioned for the faithful compliance with the terms of this section. On failure to file such bond within said time this ordinance shall become null and void. But if said board shall not approve a bond so filed, said board may in its discretion grant additional reasonable time within which to file another bond.

"'The construction of the said system shall be commenced within sixty days after this ordinance takes effect, and said system shall be completed within eighteen (18) months after the commencement of the construction thereof; provided however, that the time during which the said Samuel R. Bullock & Company, their associates, successors or assigns, are delayed by floods, act of God or the public enemy, legal proceedings for the maintenance or defence of their legal rights or in the acquisition of property or right of way, or by reason of any other causes whatever beyond their control, shall form no part of the time limited in this ordinance for the performance of any act required by the terms thereof to be done by them, but they shall use all due diligence to remove any such obstructions or delays.

"'Sec. 8. The said board of mayor and aldermen of the city of Vicksburg shall from time to time pass and enact ordinances under suitable penances providing for the protection of the said works from damage, fraud or imposition.

"'Sec. 9. At the expiration of each period of ten years after this ordinance takes effect, the mayor and aldermen of the

city of Vicksburg shall have the right and privilege to purchase the said system of waterworks, provided they notify the said Samuel R. Bullock & Company, their associates, successors or assigns, of their intention to do so, at least one year before the exipration of the said period of ten years.

"'The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their successors, associates and assigns, and the board of mayor and aldermen of the city of Vicksburg shall severally appoint one person, the two appointees shall choose a third, and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of waterworks. None of the board shall be residents of the said Warren County. The said mayor and aldermen of the city of Vicksburg shall, within sixty days after the said board have rendered its decision, pay the amount awarded in cash. A failure to so pay the award or to give notice of intention to purchase as above provided shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten years.

"'Sec. 10. The said Samuel R. Bullock & Company, their associates, successors and assigns, shall make extensions to their line of mains whenever called upon to do so by the mayor and aldermen of the city of Vicksburg. Provided, however, that said extensions shall not be less than five hundred feet in length and that one public hydrant shall be located on each five hundred feet or major portion thereof; and further provided, that two-thirds of the residents on the line of such extension shall agree to take water at the established rate for a period of at least two years, but the said Samuel R. Bullock & Company, their associates, successors and assigns, may voluntary make such extensions from time to time as they may deem necessary.

"'Sec. 11. After the works are put in operation, if at any time the pressure gauges located at the points hereinbefore named should indicate a pressure of less than twenty pounds (20) on the distributing mains at the highest point of elevation for the period of two weeks in succession, then the rentals for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained; provided, however, if the pressure indicated as aforesaid shall be less than twenty pounds for two calendar months in succession then all the rights, and privileges of the said Samuel R. Bullock & Company, their associates, successors and assigns, acquired by

virtue of this ordinance shall at the option of said board of mayor and aldermen made in writing, cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company, their associates or assigns, from temporarily shutting off the water from its said system or any portion thereof, for the purpose of making repairs or extensions to the same; and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors and assigns, for the suspension of the supply of water; provided, the repairs or extensions are made and the water turned on again without unnecessary delay. But the city shall not be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom.

"'Sec. 12. Be it further ordained, that as part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Co., their associates, successors and assigns, the said waterworks and the property and business pertaining thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation, and all the property and business pertaining to and employed in and about said system, of waterworks shall hereinafter, during each year for the balance of the period of this contract, be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars ($50,000).

"'Sec. 13. The said Samuel R. Bullock & Company, their associates, successors or assigns, shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works, and to make such rates and charges for the use of said water as they may determine; provided, that said rates and charges shall not exceed fifty cents for each one thousand gallons of water.

"'Sec. 14. *Be it further ordained*, That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg, which shall accrue to the said Samuel R. Bullock & Company, their associates, successors or assigns, by virtue of the terms and conditions of this ordinance, the said mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually levy and cause to be collected upon the taxable property of said city a special tax, to be known and designated as the waterworks tax, sufficient to meet and pay all said obligations and liabilities during the continuance of this

contract, and until all of said obligations shall be paid and discharged.

"'Sec. 15. *Be it further ordained*, That this ordinance shall take effect from and after its approval by the mayor. Ordained this 18th day of November, 1886.'

"On March 1, 1887, Samuel R. Bullock & Company assigned and transferred, under and by virtue of the fifth section of the aforesaid ordinance, all their rights and privileges acquired under the ordinance of the Vicksburg Water Supply Company, incorporated under the laws of the State of Mississippi, and the said company accepted in writing the said ordinance.

"The bill further alleges the construction of the said water plant, in accordance with the specifications contained in the ordinance, and the city accepted the same; that since the completion and acceptance of said waterworks, during a period of fourteen years up to about July, 1900, and the said company fully complied with all the terms of the ordinance, and no complaint was made by the city with respect to the execution of the company's part of the contract, and the city, without question, paid to the water company the semi-annual payments stipulated for in the ordinance; that on the 8th day of August, 1900, a mortgage that the said company had previously made, and which had fallen into default, was foreclosed, and all the franchises, ordinances, contracts and property described and conveyed in said mortgage deed were sold to the Vicksburg Waterworks Company, a corporation under the laws of the State of Mississippi, doing business in the city of Vicksburg, and which became the owner of said waterworks property and entered into operation of the same; that on October 18, 1900, the said The Vicksburg Water Supply Company executed a quitclaim deed to the said The Vicksburg Waterworks Company, conveying and assigning all rights, titles and interests it might have or might thereafter acquire in said waterworks property, franchises, ordinances and contracts; that the Vicksburg Waterworks Company gave the city notice in writing of the said purchase and assignment, with a written acceptance of the terms and provisions of the said ordinance; that since the completion and acceptance of the said waterworks the city continuously received and used the water furnished by said waterworks, during a period of about fourteen years; and said water has at all times been and now is good and wholesome for public and private use, and adequate in supply for the needs of the city and its inhabitants; that

said water so furnished from the time the city first received and accepted the same up to the present time is and has at all times been the same character and supply of water, and is and at all times has been in accordance with the said ordinance and contract entered into with said city by said S. R. Bullock & Company, the said Vicksburg Water Supply Company, and the said Vicksburg Waterworks Company, and the pressure maintained has at all times been and is now greater than required by said ordinance and contract.

"Upon these allegations, the appellants claim that a contract was entered into between the city and S. R. Bullock & Company and their assigns, the Vicksburg Water Supply Company and the Vicksburg Waterworks Company, which contract still exists and is within the protection of the Constitution of the United States."

Upon the statement of the case thus made this court said in its opinion: "*The sole question for our consideration is whether the bill, as originally filed and as amended, presented a* FEDERAL QUESTION. As the party plaintiff and the party defendant were both corporations and citizens of the same state, the circuit court of the United States could not take jurisdiction of the controversy between them unless the complainant laid grounds for that jurisdiction by asserting rights arising under the constitution or laws of the United States, and such assertion must appear in the complainant's statement of its own claim. Metcalf *v.* Watertown, 128 U. S. 586; Tennessee *v.* Union and Planters Bank, 152 U. S. 454; Blackburn *v.* Portland Gold Mining Company, 175 U. S. 571." After thus declaring that "the sole question" before it was whether or no the record presented a Federal question, this court held: (1) A case presented by a bill in equity which alleges that a contract right of a waterworks company with whose predecessors a municipality with legislative sanction, contracted for a municipal water supply, is impaired by an ordinance directing that the Waterwords Company be notified that the city denies any liability on any contract for the use of hydrants, and by the subsequent action of the city in holding an election to authorize an issue of bonds to buy or construct waterworks of its own, and in refusing to pay the amount due and payable under the

terms of the contract, is one so arising under the laws and constitution of the United States as to give a circuit court of the United States jurisdiction; (2) apprehension that such illegal action may be taken by municipality as will impair the franchise and contract rights of a waterworks company with whose predecessor the city has contracted for a municipal water supply, entitles the company to maintain a suit for equitable relief in advance of any actual proceedings on the part of the city to impair the company's rights under the contract.

The record discloses the fact that the appeal was taken under Sec. 5 of the Act of 1891 which provides: "In such case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision." The trial judge "certifies to the Supreme Court of the United States for decision the question of the jurisdiction alone of this court over this case, whether this cause presents a controversy which involves a Federal question under the laws or the constitution of the United States." It is therefore certain that the merits of this case were in nowise involved in this preliminary appeal confined by its terms to the question of jurisdiction alone.

THE SECOND APPEAL LIMITED TO THREE QUESTIONS.

After the first appeal had settled the question of jurisdiction the case went back to the circuit court where, after the filing of an answer by defendant, proof was taken. Upon the submission that followed, the court made a decree on May 18, 1894. Of that decree this court has said: "The decree in the case below was in favor of the waterworks company maintaining its right to the contract for hydrant rentals, and enjoining the city during the period of the contract, from constructing a waterworks system of its own, and requiring the city to construct a sewer for the disposal of house sewerage from the city. The assignments of error necessary to be considered are:

"1. As to the alleged error of the court below in permitting

a corporation known as the City Waterworks and Light Company, which had intervened in the case, to withdraw from the files its original bill in the nature of a supplemental bill, and striking out certain testimony which had been taken concerning the same.

"2. In enforcing the contract with the city in favor of the complainant, and restraining the city from erecting waterworks of its own during the term covered by the contract with the complainant.

"3. In requiring the construction of the sewer by the city."

To those three questions as thus stated the opinion of this court, on the second appeal, was strictly confined. The first assignment of error, presenting a question of practice, was disposed of by the declaration that it was within the discretion of the trial court "to permit the withdrawal of these pleadings and the suppression of this testimony, and it was likewise within its discretion to permit or deny a further answer by the city setting up the alleged transfer of ownership." Thus that question passed out of the case. The second assignment of error, presenting what the court described as "the principal controversy in the case," was disposed of by an adjudication in which it was held, in the language of the head note, that "while grants of franchises are to be strictly construed in favor of the public and nothing is to be taken by implication, where the city has, as in this case, by the terms of the contract given the grantee the exclusive right to erect, maintain and operate waterworks for a definite period, it can not, under the impairment clause of the constitution, erect and operate, under ordinances subsequently enacted, its own water system during the life of the franchise and subject the company to that competition." Thus that question passed out of the case. In no shape or form is it represented on this appeal. The third assignment of error, involving the legislative power that still remains in the municipality unrestrained by the terms of the contract in question, was disposed of by this adjudication: "The court decreed as to a sewer, which the record discloses was originally a surface-water sewer, that the city should re-

frain from permitting future connections therewith for the conveyance of house sewage. The Company complaining that this sewer entered into the source of supply above the intake of the waterworks, the court by a mandatory injunction required the city of Vicksburg to extend the sewer and construct an outlet therefor, so as to discharge sewage into the Yazoo or Mississippi river, below the intake of the complainant, provided, if the city was unable to construct such sewer within twelve months from date application might be made to the court for an extension of time. The error assigned in this behalf is as to the award of the mandatory injunction. We think the court erred in this respect and that it had no authority to issue a mandatory injunction requiring the city to construct a sewer, irrespective of the exercise of discretion vested by law in the municipal authorities to determine the practicability of the sewer ordered, the availability of taxation for the purpose, and the like matters; and we think that the exercise of this authority is primarily vested in the municipality and not in the courts. We find no error in the decree of the Circuit Court enforcing the contract rights of the complainant and enjoining the city from erecting its own works during the term of the contract, but error in granting a mandatory injunction as to the sewer, and in that respect the decree will be modified, and, as so modified affirmed." When the result of the second appeal is thus tested by the contents of the final decree in which it culminated, it appears that the only adjudication ever made in favor of the waterworks company by this court is embodied in the declaration that it is entitled to a decree "enjoining the city from erecting its own works during the term of the contract." This court has ascertained and declared that such was the only result of the final decree of May 18, 1894. Side by side with that conclusion was set another in which this court declared that the city of Vicksburg possessed certain legislative powers, entirely beyond the control of the courts, and therefore entirely beyond the domain of the contract whose validity has been recognized. The court will soon perceive that the municipal ordinances,

whose validity is involved in the third and present appeal, are the outcome of the exercise of police powers to which the contract in question can not possibly extend, such police powers as no municipality can possibly bargain away.

The Third and Present Appeal.

The equity case in which the two preceding appeals were taken was numbered 41 on the docket of the circuit court, and the final decree in that case was rendered on May 18th, 1904. Shortly before and about the time such final decree was rendered, the mayor and aldermen of the city of Vicksburg, in the exercise of what they deemed their police powers, outside and beyond the influence of said contract, enacted the three following ordinances:

An Ordinance to Fix and prescribe Maximum Rates & Charges for Water Supplied to the City of Vicksburg, Where Measured by Meters, and for Other Purposes.

Section 1. Be it ordained by the Mayor and Aldermen of the City of Vicksburg, that hereafter every person, firm, company, corporation engaged in the business of furnishing water to the inhabitants of the City of Vicksburg, where the water is measured by meters and if charged for according to quantity of water so supplied in said city shall not exceed those herein named and fixed, which rates and charges are reasonable and just, that is to say, the following are the maximum rates and charges which may be so collected and made.

100 to 1000 gallons per day	40 cents per M.
1000 to 2000 gallons per day	35 cents per M.
2000 to 3000 gallons per day	30 cents per M.
3000 to 5000 gallons per day	25 cents per M.
5000 to 10000 gallons per day	20 cents per M.
10000 and over gallons per day	15 cents per M.

Section 2. Be it further ordianed that the maximum rates and charges fixed in the foregoing section shall be for the water actually taken or used; provided a maximum charge of twenty-five cents per month for inspecting and reading meters may be made where the water taken within that time amounts in value to less than that amount.

SECTION 3. Be it further ordained that such person, firm, company or corporation engaged in the business of furnishing the inhabitants of said city with water, desire that the water taken and consumed by such inhabitants shall be measured by meters and charged for according to the quantity of water taken or consumed, such person, firm, company or corporation shall put in and install and maintain such meters at his or its own expense.

SECTION. 4. Be it further ordained that any person, firm, company or corporation, or the officer or agent of such, who shall charge, collect, or receive money at a greater rate than is prescribed in Sections 1 and 2 of these ordinances, for water so furnished and supplied shall be guilty of misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned in the City work house or County Jail not exceeding thirty days or both for such offense.

SECTION 5. Be it further ordained that this ordinance shall be in force and take effect from and after May 1st, 1904 next.

Ordained this 18th day of April, 1904.

H. J. TROWBRIDGE,
City Clerk.

Approved this 20th day of April, 1904.

W. L. TROWBRIDGE,
Mayor.

Ordinance to Fix and Prescribe the Maximum Flat Rates and Charges for the Supply of Water to Consumers in the City of Vicksburg, & for Other Purposes.

Be it ordained by the Mayor and Aldermen of the City of Vicksburg:

SECTION 1. That hereafter every person, firm, company or corporation engaged in the business of furnishing water to consumers thereof, being inhabitants of the City of Vicksburg, shall furnish the same to such consumers thereof for domestic and other purposes and uses herein enumerated and specified at rates and charges not exceeding those herein named and fixed, which rates are reasonable and just; that is to say, water shall be furnished such persons, firms, companies and corporations *to* consumers thereof, being inhabitants of the City of Vicksburg for domestic and residence purposes and uses, where no meter has been put in or attached, for ascertaining the quantity of water used at rates and charges not exceeding or above the following named rates and charges per year (which may be collected quarterly or by the month) to-wit:

Residence occupied by one family only two rooms or less $3.00
Residence occupied by one family only three rooms or less 4.00
Residence occupied by one family only four rooms or less 5.00
Residence occupied by one family only 5 or 6 rooms.... 6.00
Residence occupied by one family only 7 or 8 rooms.. 7.00
Residence occupied by one family only 9 or 10 rooms 8.00
Residence occupied by one family only 11 or 12 rooms.. 9.00
Residence occupied by one family only 13 or 14 rooms.. 10.00
Residence occupied by one family only 15 or 16 rooms.. 11.00
Residence occupied by one family only 17 or 18 rooms. 12.00
Residence occupied by one family only 19 or 20 rooms.. 13.00
Residence occupied by one family only with more rooms for each additional room 30.00

Residence rates occupied by more than one family in addition to the rates charged for residence occupied by one family only fifty cents per year, for each additional person not a member of the family.

Bath without heating apparatus (in addition to room rate) $3.50
Bath with heating apparatus (in addition to room rate) 3.50
Buggy ..... (in addition to room rate) 3.00
Carriage ..... (in addition to room rate) 2.00
Filling cisterns per 100 gallons (in addition to room rate) .06
Cow ..... (in addition to room rate) 12.00
Dental office 15.00
Horse in addition to room rates 2.00
Sprinkling side walk and street and lawn 50 feet and under 9.00
Over 50 feet 15 cents per foot, not exceeding 3–16 inch orifice four hours per day .....
Hose for sprinkling gardens, per square foot, ¼ cent but no license less than 2.50
Water closet, self cleaning (in addition to room rate)... 5.00
Urinal in private residence (in addition to room rate) .. 10.00

The rates and charges herein provided, for water taken or consumed for domestic purposes in private residences, shall embrace and include all water supplied for such purposes in such residences, no matter through what faucets or openings admitted. Nothing in this ordinance contained shall be

construed to prescribe or fix rates and charges for manufacturing, steam or other power purposes.

SECTION 2. Any water furnished by such persons, firms, companies and corporations to consumers thereof, being inhabitants of the City of Vicksburg for offices, bank, stores, and other similar purposes where no meter has been put in or attached for ascertaining the quantity of the water used, shall be furnished at rates and charges not exceeding or above the following rates per annum (which may be charged and collected quarterly or by the month) where such water is furnished and supplied in the manner and for the purposes following, to-wit:

Barber shop, first chair	$10.00
" " each additional chair	3.00
Bath, public	15.00
Billiard saloon, each table	3.00
Blacksmith shop, each fire	3.00
Boarding house, per room	3.00
Brick work, per thousand	.10
Dyeing and scouring	25.00
Forge	3.00
Foundry, each fire	3.00
Grocery store	10.00
Plastering per square	.01½
Pool table, each	3.00
School, for every scholar	.08
Store with wash-stand and faucet	12.00
Water closet in hotel and other public places	10.00
Urinal not in private residence	20.00

SECTION 3. Any person, firm, company or corporation engaged in business of furnishing and supplying water to the inhabitants of said city, desiring to charge and receive compensation for water furnished to such inhabitants, according to the quantity of water taken, and consumed, may at the expense of such firm, company or corporation, put in and install meters of a good and reliable kind, and in such cases demand and receive pay for such water according to the quantity of water consumed instead of according to the flat rate herein provided for.

SECTION —. Any person, firm, company or corporation furnishing or supplying water to the inhabitants of the said city, or any officer or agent of any such person, firm, company or corporation who shall demand, receive or collect any money for water furnished and suppplied as aforesaid in cases cov-

ered by and included on the schedule of rates and charges fixed as a maximum rate herein, greater, and in excess of the rates and charges herein, shall be deemed and held guilty of a misdemeanor, and on conviction shall be fined not less than 50 dollars, or be imprisoned in the County jail, or the City work house for not over thirty days for each offense.

SECTION 5. Be it further ordained that this ordinance shall be in force and take effect from, and after the first day of May, 1904, next.

Ordained this 18th day of May, 1904.

H. J. TROWBRIDGE, *Clerk.*

Approved this 20th day of May, 1904.

W. L. TROWBRIDGE, *Mayor.*

"An Ordinance to Require Water Works, Gas and Electric Light Companies to Present Bills, Before Charging Damages for Failure to Pay Them When Due.

SECTION 1. Be it ordained by the Mayor and Aldermen of the City of Vicksburg that it shall be unlawful for any Water Works company, electric light company or Gas company engaged in business in the City of Vicksburg, to charge, claim or collect damages or other penalty for failure to pay bills when due, whether it be a refusal to allow discount provided for by such company to secure prompt payment, or be a charge of damages in addition to the regular bills for light, water or gas, until ten days after presenting to the debtors itemized bills for the amount due, and affording them an opportunity at the time of such presentation of paying the same.

SECTION 2. Be it further ordained that any waterworks company, electric light company, or gas company in business in said city, which shall knowingly and wilfully violate this ordinance, shall be fined in the sum of ten dollars for each offense.

SECTION 3. Be it further ordained that this ordinance shall take effect from and after this passage.

Ordained this 7th day of December 1903.

H. J. TROWBRIDGE,
City Clerk.

Approved this 8th day of December 1903.

W. L. TROWBRIDGE, *Mayor.*

Presented to the Mayor for his approval or disapproval this 8th day or December 1903 and returned to me with his approval thereon this 9th day of December 1903.

H. J. TROWBRIDGE,
City Clerk."

On March 19th, 1904, the Legislature of Mississippi passed an act authorizing cities and towns in the State to prescribe maximum rates for water supplied by water companies to the inhabitants thereof, and in pursuance of said act of the Legislature, and to meet the necessity created by the arbitrary and unreasonable rates and regulations exacted and enforced by appellee, appellants enacted the said ordinances hereinbefore set forth and approved, respectively, April 20th and May 20th, 1904. *On the final hearing of said equity case numbered* 41, *no mention, either in the record or otherwise, was made of said ordinances, and they were not considered by the Circuit Court, nor any question pertaining to the right of appellants to enact them.* For the reason that said ordinances were in nowise embraced in the record in said case numbered 41, so as to bring them within the reach of the court in that case, Appellee, *on January 7th*, 1895, *filed in said Circuit Court an original bill, thus beginning a new and distinct suit which is numbered on the docket of that court* 79. The avowed and primary purpose of the new bill was to enjoin the city of Vicksburg from enforcing the said three ordinances as hereinbefore set forth. On January 11th, 1905, only a few days after the bill was filed, a restraining order was made (record, p. 374) "enjoining defendant from in any manner interfering with the rules and regulations of complainant, the Vicksburg Waterworks Company, and the water rates for the inhabitants of defendant now in force established by the Vicksburg Waterworks Company and in any other manner interfering with complainant's contract rights, and the defendant is hereby restrained from enforcing the ordinances passed by it as set out in complainant's bill." On February 24, 1905, *before the case was at issue*, the Circuit Court committed a grave error by making the temporary injunction granted January 11th, perpetual (record p. 393).

On January 3d, 1906, the circuit court rendered its final decree, in the following terms:

Equity No. 79.

VICKSBURG WATERWORKS COMPANY,

vs.

MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This cause coming on to be finally heard at this January Term, 1906, of this Court, upon the original bill of complaint and the answer of the defendant thereto, and all the exhibits which are made such, to said original bill of complaint and said answer, and all of the other pleas and proceedings in this cause, together with a certified copy of the charter of the said Vicksburg Water Works Company, which is filed in the record as evidence in the cause, also the petition of the defendant for a modification of the temporary injunction granted in this cause, so that the complainant shall not be authorized to cut off water from its patrons who refuse to pay the rates of complainant, claiming the right to have the injunction modified by virtue of the ordinances of the defendant, fixing water rates; and the motion of complainant to have said injunction granted heretofore made perpetual. And the Court having heard the arguments of counsel, and being fully advised in the premises, and being satisfied that the complainant is entitled to the relief prayed for in its bill of complaint for full relief, it is thereupon finally ordered, adjudged and decreed:

First. That the defendant, the Mayor & Aldermen of the City of Vicksburg, be and is hereby denied the relief prayed for in its petition, to-wit, that the injunction be modified so that the Mayor & Aldermen of the City of Vicksburg shall not be restrained from enforcing the ordinances passed by them fixing the water rates and prescribing rules and regulations of the Vicksburg Waterworks Company, and that the Vicksburg Waterworks Company shall not be permitted to cut off patrons' water provided patrons pay the rates fixed in said ordinances.

Second. That said defendant be and is hereby enjoined from enforcing the said three ordinances described in said bill to-wit: An ordinance entitled "An Ordinance to fix and prescribe maximum rates and charges for water supplied to the inhabitants of the City of Vicksburg, whether measured by meters, and for other purposes," approved the 20th of April, 1904; an ordinance entitled "An Ordinance to fix and prescribe the maximum flat rates and charges for

the supply of water to consumers in the City of Vicksburg, and for other purposes," approved the 20th day of April, 1904; and an ordinance entitled " An ordinance to require waterworks, gas and electric companies to present bills before charging damages for a failure to pay them when due," approved the 8th day of December, 1903, so far as the latter relates to complainant.

That the restraining order heretofore granted in this cause on the 11th day of January, 1905, be and the same is hereby made permanent.

Fourth. That the said defendant be and is hereby enjoined from in any manner interfering with complainant's contract rights under its said contract with the City of Vicksburg entered into between Samuel R. Bullock & Company and said City under the ordinance of November 19th, 1886.

Fifth. That the defendant be and is hereby enjoined from interfering with the rules and regulations of complainant, the Vicksburg Waterworks Company, and the water rates for the inhabitants of the City of Vicksburg now in force established by the Vicksburg Waterworks Company.

Sixth. That said defendant be and is hereby enjoined from interfering with the water rates known as the flat rates now in force established by the Vicksburg Waterworks Company.

It is further ordered, adjudged and decreed that the defendant pay all costs of this cause.

Finally ordered adjudged and decreed this the 3d day of Jan. A. D. 1906.

H. C. NILES,
Judge.

The petition for a modification of the temporary injunction, referred to in the decree and omitted from the record by inadvertence, has been substituted by agreement.

From that final decree an appeal was taken to this Court and the errors assigned are as follows:

VICKSBURG WATER WORKS COMPANY,

vs.

THE MAYOR & *Mayor &* ALDERMEN OF THE CITY OF VICKSBURG, a Municipal Corporation, Defendant.

Assignment of Errors.

Now comes the defendant, the Mayor & Aldermen of the City of Vicksburg a municipal corporation, and files the following assignment or error to the action of the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, in making and rendering the final decree in this cause, rendered herein on the 3d day of January, 1906, and in rendering the interlocutory decree rendered herein on the 24th day of February, 1905, upon which assignments of error the said defendants will rely on the appeal in this cause in the Supreme Court of the United States.

Assignments of Error to the Action of the Court in Rendering said Final Decree, January 3, 1906.

I.

The said Court erred in deciding and rendering a final decree in this cause in favor of the complainant, the Vicksburg Water Works Company.

II.

The said Court erred in final hearing of this cause January 3d, 1906, in not deciding said cause in favor of the Defendant, the Mayor & Aldermen of the City of Vicksburg, and in not dismissing complainant's original bill of complaint in this cause filed by it, and in not dissolving *in toto* the injunction theretofore granted in said cause.

III.

The said Court erred in enjoining and making perpetual the injunction theretofore granted and issued in said cause,

restraining defendant from enforcing the ordinance enacted and adopted by the defendant, mentioned and described in the original bill of complaint herein filed, namely: an ordinance entitled "An ordinance to fix and prescribe maximum rates and charges fc. water supplied to the inhabitants of the City of Vicksburg, whether measured by meters or not, and for other purposes, approved the 20th day of April, 1904.

IV.

The said Court erred in enjoining and making perpetual the injunction theretofore granted and issued in said cause, restraining defendant from enforcing the ordinance enacted and adopted by the defendant, mentioned and described in the original bill of complaint herein filed, namely: an ordinance entitled "An ordinance to fix and prescribe maximum flat rates and charges for the supply of water to the consumer in the City of Vicksburg, and for other purposes, approved the 20th day of April, 1904."

V.

The said Court erred in enjoining and making perpetual the injunction theretofore granted and issued in said cause, restraining defendant from enforcing the ordinance enacted and adopted by the defendant, mentioned and described in the original bill of complaint herein, namely: filed, an ordinance entitled an "ordinance to require waterworks, gas and electric light companies to present bills before charging damages for failure to pay them when due, approved the 8th day of December, 1903, so far as the latter relates to complainant.

VI.

The said Court erred in enjoining and making perpetual the injunction hereinbefore granted restraining defendant from enforcing each and every one of the several ordinances passed and adopted by said board of Mayor & Aldermen, which are set out and described in full in complainant's original bill of complaint.

VII.

The said Court erred in making the restraining order granted on the 11th day of January, 1905, in this cause perpetual, as set out in the third paragraph of said final decree.

VIII.

The said court erred in enjoining defendant from in any manner interfering with complainant's alleged contract rights under its alleged contract with the city of Vicksburg, entered into between Samuel R. Bullock & Company and said City of Vicksburg under the ordinance of November 19th, 1886, as set out in the fourth paragraph of said final decree.

IX.

The said Court erred in decreeing that the defendant be enjoined from interfering with the rules and regulations of Complainant, the Vicksburg Water Works Company, as set forth in the first portion of paragraph five of said final decree.

X.

The said Court erred in decreeing that the defendant be enjoined from interfering with the water rates for the inhabitants of the City of Vicksburg now in force established by the Vicksburg Water Works Company as set out in paragraph five of said final decree.

XI.

The said Court erred in decreeing that the defendant be enjoined from interfering with the water rates known as "flat rates" now in force established by the Vicksburg Water Works Company.

XII.

The said Court erred in holding, deciding and decreeing in effect that the Mayor & Aldermen of the City of Vicksburg of November 19th, 1886, granting to Samuel R. Bullock & Company the right to construct and operate waterworks in the City of Vicksburg to supply the said City and its inhabitants with water was and contained such a contract

with said city as that the Mayor & Aldermen could not lawfully adopt and enforce all and each or any one of the three ordinances passed and adopted by said City regulating the rates to be charged by complainant for the water furnished to the inhabitants of said city and other persons, and prescribing rules and regulations for said Company, set out and described in the original bill of complaint in this cause.

XIII.

The said Court erred in holding that the contract rights and franchises of Samuel R. Bullock & Company acquired under and by virtue of the ordinance of the said Mayor & Aldermen of November the 19th, 1886, authorizing Samuel R. Bullock & Company, their successors and assigns, to construct and operate waterworks to supply water to the City of Vicksburg and its inhabitants, became and are vested in the complainant, the Vicksburg Water Works Company, and may be asserted by it against the defendant.

XIV.

The said Court erred in holding, deciding and decreeing in effect that the adoption and enforcement of all three and each or any of the said ordinances of the said defendant set out and copied in the original bill of complaint in this cause, was in violation of and in conflict with any rights the complainant acquired under or by virtue of said ordinance of November 19, 1886, of the said Defendant, the Mayor & Aldermen of the City of Vicksburg and was in conflict with Section Ten, Article I, of the Constitution of the United States, wherein it is provided that no state shall pass any law impairing the obligation of a contract.

XV.

The said Court erred in holding, deciding and decreeing in effect that the complainant, the Vicksburg Water Works Company, had any right, privileges or franchises under and by virtue of said ordinance of November 19th, 1886, passed and adopted by the said Mayor & Aldermen of the City of Vicksburg.

XVI.

The said Court erred in holding, deciding and decreeing in effect that the rights and franchises of Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in the City of Vicksburg, acquired under and by virtue of the ordinance of said Mayor & Aldermen of the City of Vicksburg, enacted and adopted in November, 1886, authorizing by section thirteen thereof the maximum of fifty cents per thousand gallons for water furnished, passed from the Vicksburg Water Supply Company by its sale to the complainant or by the sale and foreclosure under the deed of trust made by that Company, and that it was acquired and owned by the complainant, the Vicksburg Water Works Company.

XVII.

The said Court erred in holding, deciding and decreeing in effect that the act of the Legislature of Mississippi, of March 18th, 1886, amending the charter of the City of Vicksburg, contained in the Laws of the State of Mississippi of 1886, at page 694, vested in the Mayor & Aldermen of said City the right and power to make a contract with Samuel R. Bullock & Company, their associates, successors and assigns, whereby to deprive the said Mayor & Aldermen of said City of the governmental power to fix and prescribe maximum rates of charge for water to be supplied to its inhabitants, or to fix and prescribe reasonable rules and regulations for the government and conduct of the persons who should own and operate said waterworks erected and operated under said Contract.

XVIII.

The said Court erred in holding and decreeing in effect that the act of the Legislature of the State of Mississippi, approved March 19th, 1904, entitled "An act to enable Cities, towns and villages incorporated under general or special laws of this state, to fix the rates and charges for the supply of water, electric lights or gas furnished by any individual, company or corporation to any such city, town or village and the inhabitants thereof," contained on the Laws of Mississippi of 1904, at page 231, did not have the effect

to authorize defendant to enact all, each or any one of the three ordinances set forth copied and described in Complainant's original bill of complaint filed in this cause, by which to fix maximum rates and charges for water to be furnished by complainant, and otherwise fixing rules and regulations of complainant's business as a water supply Company.

XIX.

The said Court erred in holding and decreeing in effect that defendant did not have authority to enact and enforce all three ordinances enacted and adopted by it, set out, described and copied in complainant's original bill of complaint filed in this cause.

XX.

The said Court erred in holding in effect that the said act of the Mississippi Legislature of March 19th, 1904 (Laws of Miss. 1904, page 231) and the two ordinances of the Mayor & Aldermen of the City of Vicksburg, approved April 20th, 1904, set out and described in the original bill of complaint in this cause, were in conflict with and in violation of Section 10 of Article I of the Constitution of the United States, wherein, it is provided that no state shall pass any law impairing the obligation of a contract.

XXI.

The said Court erred in adjudging and decreeing that the defendant pay all the costs of this cause.

Assignment of error to the action of the Court in rendering the decree in this cause of and on the 24th day of February, A. D. 1905.

I.

The said Court erred in rendering said interlocutory decree before the replication was filed and the issue joined on the answer of defendant.

II.

The said Court erred in overruling, and denying the relief prayed for in the petition filed by the defendant, asking a modification of the temporary injunction which had been granted in this cause on Jan. 11th, 1905.

III.

The said Court erred in granting and decreeing the injunction restraining the defendant from enforcing all or any one of the three ordinances passed and adopted by the Mayor & Aldermen of the City of Vicksburg, set out, described and copied in the original bill of complaint in this cause.

IV.

The said Court erred in holding in effect that Section 13 of the Ordinance of November, 1886, of the Mayor & Aldermen of the City of Vicksburg, set out and referred to in the pleadings in this cause, constituted a contract between the city of Vicksburg and Samuel R. Bullock & Company, their associates, successors and assigns, authorizing them to charge a maximum rate of 50cts. per thousand gallons for water furnished to the inhabitants of the city of Vicksburg, and that the City of Vicksburg had no power or authority by reason of that fact to adopt said ordinances regulating and prescribing rates to be charged by complainant for water furnished to said inhabitants.

V.

The said Court erred in holding in effect that the said section 13 of said Ordinance of November, 1886, was such a contract as that, under section 10, Article 1, of the Constitution of the United States, the Legislature of the State of Mississippi and the Mayor & Aldermen of the City of Vicksburg, acting under the authority thereof, had no power to prescribe the rules and regulations of, and the maximum rates of charges for water by, said complainant company.

VI.

That the said Court erred by said decree of Feb. 24th, 1905, in decreeing and continuing the injunction or restrain-

ing order in this cause granted on the 11th day of January, 1905.

In order therefore that the foregoing assignment of errors may be and appear of record, the respondent presents the same to the Court, and prays that such disposition be made thereof as in accordance with law and the Statutes of the United States in such cases made and provided, and that upon hearing the said final decree may be reversed and said cause remanded.

BRIEF AND ARGUMENT.

I.

Sole and only Basis of Appellee's Claim.

The sole and only basis upon which appellee rests its claim of exemption from the right of the Legislature of Mississippi to regulate water rates is Section 13 of the ordinance of November 18, 1886, set out in the record in this cause (p. 28), by which Samuel R. Bullock & Company, their associates, successors and assigns, were authorized to construct and operate waterworks for public use. Section 13 of said ordinance is as follows:

"Section 13. The said Samuel R. Bullock & Company, their associates, successsors or assigns, shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works, and to make such rates and charges for the use of said water as they may determine, provided that such rates and charges shall not exceed 50 cents for each thousand gallons of water." *The only vestige of legislative authority* authorizing the Mayor and Alderman of the City of Vicksburg to enact the said ordinance of November 18th, 1886, is a part of Section 5 of an act entitled "An act to amend the charter of the City of Vicksburg, approved March 7, 1884." The act in question was approved March 18, 1886, and is contained in "Laws of Mississippi, 1886," pp. 694-95. Said section 5, is as follows: "Sec. 5. *Be it futher enacted*, That section twenty-eight (28) of said charter be and is hereby

amended by adding thereto the following: Article 29, to provide for the lighting of said city by electric lights, or other methods; *article* 30, *to provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties who shall build and operate waterworks.*" These thirty-seven italicized words represent the entire authority ever granted by the Legislature of Mississippi to the municipal corporation in question to create such a monopoly against the common right and against the reserved powers of said Legislature as is claimed by appellee. This terse and simple legislative authority emphatically negatives the idea that the city of Vicksburg was to have the power to grant any special privileges to appellee whatsoever. Said city was only authorized "*to provide for the erection and maintenance of a system of waterworks to supply said city with water.*" No authority was given, expressed or implied, (1) to make the grant to appellee an exclusive one; (2) no limitation upon the power of the Legislature subsequently to regulate or reduce water rates was even hinted at. In the present record there is a studied silence upon the part of appellee as to the legislative authority under which the ordinance of November 18, 1886, was enacted. The Court will not find the act of March 18, 1886, in the record. It is nevertheless before the court as a part of its judicial knowledge. It is well settled that in the exercise of its appellate jurisdiction over the lower courts of the United States, this court takes judicial notice of the laws of all the states. Renaud *v.* Abbott 116 U. S. 277; Hanley *v.* Donoghue, 116 U. S. 1; Liverpool and G. W. Steam Co. and Phenix Insurance Co. 129 U. S. 445.

II.

City of Vicksburg not Authorized to Create a Monopoly or to Confer Special Privileges of any Kind.

"In determining *the extent of the power* of a municipal corporation to make contracts, and in ascertaining *the mode* in which the power is to be exercised, the importance of a care-

ful study of the charter or incorporating act, and the general legislation of the state, on the subject if there be any, cannot be too strongly emphasized. Where there are express provisions on the subject, these will, of course, measure, as far as they extend, the authority of the corporation. It results from this doctrine that unauthorized contracts are void, and in actions thereon the corporation may successfully interpose the plea of *ultra vires*, setting up as a defense its own want of power under its charter or constituent statute to enter into a contract." Dillon on Municipal Corporation, §§ 443, 457. From the same high authority we take the following: "§ 362 (296) *Monopolies invalid.* The power to license and regulate a lawful and necessary business will not give the corporation the power to make contracts which create or tend to create a monopoly. 2. Chicago *v* Rumpff, 45 Ill. 90, 1867. In this case, under a power granted to the city, in its charter, to regulate and license the slaughtering of animals within the corporate limits, the common council passed an ordinance, whereby a particular building was designated for the slaughter of all animals intended for sale or consumption in the city, the owners of which were granted the *exclusive right*, for a specified period. * * * It was also held that this contract tended to create a monopoly, and was therefore void. * * * A monopoly cannot be *implied*, but must rest upon express grant. Canal Co. *v.* Railroad Co., 11 Leigh (Va.), 42, per Tucker, President. * * * § 695 (550). However it may be as respects the power of the legislature to make the grant *exclusive*, no such power, it is clear, can be exercised by a municipal council, unless it be plainly conferred by express words, or by necessary, or at least reasonable, implication. * * * § 727 (578). But a legislative grant of authority to construct a street railway is not exclusive unless so declared in terms, and therefore the legislature may at will, and without compensation to the first company, authorize a second railway on the same streets or line, unless it has disabled itself by making the first grant irrepealable and exclusive." This court has held that exclusive rights to public franchises are

not favored, and will never be presumed in the absence of an express grant. Wright *v.* Nagle, 101 U. S. 791; Ruggles *v.* Illinois, 108 U. S. 536. In the case first cited this Court said: "*Every statute which takes away from a Legislature its power will be construed most strongly in favor of the State.*" Thus very emphatic statement of the rule was made by this Court in Vicksburg *v.* Waterworks Co. 202 U. S., p. 469: "In considering this contract we are to remember the well-established rule in this court which requires grants or franchises and special privileges to be most strongly construed in favor of the public, and that where the privilege claimed is doubtful nothing is to be taken by mere implication as against public rights. This rule has been applied to a series of contracts in waterworks and lighting cases, and we have no disposition to detract from its force and effect. And unless the city has excluded itself in plain and explicit terms from competition with the Water Works Company during the period of this contract it cannot be held to have done so by mere implication. The rule as applied to waterworks contracts, was last announced in this court in Knoxville Water Works Co. *v.* Knoxville, 200 U. S. 22, decided at this term, citing previous cases." After thus correctly defining the rule of construction this Court applied it, *not to the meagre terms of the act of the legislature* which contained no words which could, by possibility, have authorized the creation of an exclusive privilege, but to the terms of the ordinance which did contain such terms. The decision was made to turn upon the words of the ordinance giving to "Bullock & Company, their associates, successors and assigns, the exclusive right to erect, maintain and operate waterworks, for a definite term, to supply water for public and private use. These are the words of the contract. * * * It is difficult to conceive of words more apt to express the purpose that the company shall have the undivided occupancy of the field so far as the other contracting party is concerned." Counsel for appellants claimed then, as we respectfully claim now, that as the act of the legislature did not authorize the corporation in question to create a monopoly, either

expressly or by implication, all such words in the ordinance as were made the basis of the judgment of this court were non-existent, because embraced in a part of the ordinance which was *ultra vires* and void.

III.

No Contract Exemption from Legislative Power to fix Tolls, Rates, or Prices.

But the adjudication in question as to the exclusive right of appellee to maintain and operate waterworks for a definite period cannot in any manner give color to the present contention, never considered or passed upon heretofore, that the Legislature of Mississippi has deprived itself of the power subsequently to authorize the city of Vicksburg to regulate rates of charges for water, and prescribe rules and regulations for the conduct of the Water Company. The rule upon that subject has been too firmly settled by this court to admit of controversy. In Railroad Commission Cases, 116 U.S. 307, this court said: "This power of regulation is a power of government, continuing in its nature, and if it can be bargained away at all, *it can only be by words of positive grant, or something which is in law equivalent.* If there is a reasonable doubt it must be solved in favor of the existence of the power." After quoting that language in Freeport Water Company *v.* Freeport, 180 U. S. 587, this court held that the power of a municipal corporation to grant exclusive privileges must be conferred by explicit statutory terms. If inferred from other powers it is not enough that the power is convenient to other powers; it must be indespensable to them. In that case it was said that a contract giving a water company the right to charge certain rates for thirty years without interference by new ordinances changing rates, is authorized by Illinois act of April 9, 1872, empowering cities and villages to contract with such companies for a supply of water for public use for a period not exceeding thirty years, and Illinois act of April 10, 1872, empowering such municipalities to authorize persons or private corpora-

tions to construct and maintain waterworks "at such rates as may be fixed by ordinance and for a period not exceeding thirty years," since, under the rule requiring strict construction of such grants, the clause "for a period not exceeding thirty years" qualifies the words "construct and maintain," but does not qualify the words "at such rates as may be fixed by ordinance." In Rogers Park Water Company *v.* Fergus, 180 U. S. 624, we are told by the court that "*The predecessor of the plaintiff in error was given the monopoly of the supply of water. That might be necessary to induce the investment of capital, and for its security the obligation of a contract might be sought and given. There was no such inducement for an unalterable rate.*" It was therefore held (1) that a contract concerning governmental functions, such as one which affects the right of a city to regulate rates of a water company, must be strictly construed; and such functions can not be held to have been stipulated away by doubtful or ambiguous provision; (2) that an ordinance granting an exclusive franchise to a water company, with the right to use streets, requiring the municipality to pay certain rentals, and binding the grantee, among other things, to furnish an adequate supply of water, does not give a contract right to charge the rates named in the ordinance for the whole period of the franchise by virtue of a provision that the grantee "shall charge the following annual rate to consumers of water during the existence of this franchise," as this is merely a regulation of the right to charge rates, and does not amount to a stipulation that no other regulation will be made during the term of the franchise. In City of Joplin *v.* Southwest Missouri Light Co. 191 U. S. 150, it was held that an implied contract that the city will not for twenty years enter into the business of commercial electric lighting, does not arise from a municipal grant to certain persons under the authority of Missouri laws 1891, p. 60, of the right to erect and maintain an electric light plant for that period, where such grant is not exclusive. In Owensboro *v.* Owensboro Water Works Company, 191 U. S. 358, it was held that a municipality is not precluded from exercising

the power to fix and regulate water rates, conferred upon it as a city of the third class by Kentucky act of June 14, 1893, §3290, by the provisions of a prior municipal ordinance granting the right to construct waterworks, which gave the grantee power and authority to make and enforce, as a part of the condition upon which it will supply water to its consumers, all needful rules and regulations not inconsistent with the law, or provisions of this ordinance." In Stanislaus *v.* San Joaquin and K's R. C. and I. Co. 192 U. S. 201, it was held that assuming that a contract exemption from the reduction by a board of supervisors of water rates below a certain point was created in favor of the company organized under Cal. Stat. 1853, p. 87, as amended by Cal. Stat. 1862, p. 540, by the provisions of § 3 of the latter act, the legislature, in the exercise of its reserved power to alter or repeal, conferred by Cal. Court. 1849, art. 4, § 31, still could enact the provisions of Cal. Stat. 1885, p. 95, § 5, authorizing the supervisors to reduce the rates to not less than 6 nor more than 18 per cent upon the then value of the property actually used in supplying water to the public. By this unbroken line of authority the following principles are settled: (1) "This power of regulation is a power of government, continuing in its nature, and if it can be bargained away at all, *it can only be by words of positive grant.*" (2) "Every statute which takes away from a Legislature its power will be construed most strongly in favor of the State;" (3) the power of a municipal corporation to grant exclusive privileges must be conferred by explicit statutory terms. It only remains for this court to apply these rules which it has firmly settled for its own guidance, to the following provision of the Act of March 18th, 1886, the only legislation ever enacted by the Legislature of Mississippi on this subject: "Article 30, to provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties who shall build and operate waterworks?" Will any one have the hardihood to contend that that brief provision, *in which the subject of water rates is not mentioned in any shape or form*, constitutes

a surrender upon the part of the State of Mississippi of the governmental power of regulation "*by words of positive grant*;" or that the right was thus conferred upon the City of Vicksburg to bargain away that state power of regulation "*by explicit statutory terms.*" Of course no one will contend that the terms of the ordinance of November 18, 1886, are of the slightest importance, as the validity of that ordinance depends absolutely upon the terms of the act that authorized it. The State of Mississippi never having surrendered, directly or indirectly, its governmental power to regulate water rates, passed through its Legislature on March 19, 1904, an act authorizing cities and towns in the State to prescribe maximum rates for water supplied by water companies to the inhabitants thereof. Under the authority of said act, and to meet the necessity created by the arbitrary and unreasonable rates and regulations exacted and enforced by appellee, appellants enacted on the 20th of April, 1904, and on the 20th of May, 1904, respectively, the two ordinances hereinbefore set forth. *As the legislative authority for such ordinances was perfect and complete*, and as appellee possesses no contract exemption from the exercise of such regulating power upon the part of the State of Mississippi, the decree of the Circuit Court enjoining the execution of such ordinances should be reversed and annulled.

IV.

Effect of the Mississippi Constitution of 1890.

It is confidently contended that the foregoing argument entirely disposes of the only question involved in this case, irrespective of the effect of the Mississippi Constitution of 1890, which is referred to simply as a cumulative argument. The fact should be borne in mind that the original contract with Bullock & Co. was made in 1886. In that contract it was provided that Bullock & Company, their associates, successors and assigns might procure the organization of a waterworks company and assign their rights and privileges under the ordinance to such corporation. Such corporation

was organized under the name of the Vicksburg Water Supply Company on Feb. 1, 1887, and on March 1st, 1887, Bullock & Co. assigned to it said contract. Thirteen years thereafter all of the property of the Vicksburg Water Supply Co. was sold at foreclosure sale and was purchased by M. O. Crumpler who, on August 18, 1900, assigned his bid to the Vicksburg Water Works Company to which a quit claim deed was also made by the Vicksburg Water Supply Company, Oct. 18, 1900. This appellee, the Vicksburg Water Works Company, was not incorporated until 1900, *and it is not the corporation described and contemplated in the contract of* 1886. It has no possible connection with the contract made with Bullock & Co. in 1886, except through the foreclosure sale of August 18, 1900. The claim now is that as the alienee of the purchaser at such sale *it bought a certain exemption from the power of the State of Mississippi to revise and reduce water rates*, supposed to have been vested originally in Bullock & Co., under the contract of 1886. In 1890, *ten years before the organization of the corporation in question*, the State of Mississippi adopted a constitution which provides: "Sec. 178. Corporations shall be formed under general laws only. The legislature shall have power to alter, amend or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever in its opinion, it may be for the public interest to do so; *Provided*, that no injustice shall be done to the stockholders." Certainly no one will deny that, under the terms of that provision, the Legislature of Mississippi has complete and perfect power to amend or repeal any charter granted since 1890 by the Governor, by and with the advice of the Attorney General, under general laws to that effect. See Code of 1892, Chap. 25, beginning with Sec. 832. Appellee came into existence under the limitations of Sec. 178, and its corporate life is and must ever remain subject to its terms. But the effort will be made to defeat that result by the contention that this appellee derived through the foreclosure sale, as an item of property, *a certain exemption from the power of the State to regulate water rates*, which, it is said, is protected by

the contract clause of the federal constitution. Fortunately that contention is overwhelmed by a line of authority in this court. In St. Louis and S. F. R. Co. *v.* Gill, 156 U. S. 649, it was said: "It has been frequently decided by this court, that a special statutory exemption or privilege, such as immunity from taxation or a right to fix and determine rates of fare, does not accompany the property in its transfer to a purchaser, in the absence of express direction to that effect in the statute. Morgan *v.* Louisiana, 93 U. S. 217; Wilson *v.* Gaines, 103 U. S. 417; Chesapeake and O. R. Co., *v.* Miller, 114 U. S. 176." In Norfolk and W. R. Co. *v.* Pendleton, 156 U. S. 667, it was held: (1) that the Norfolk and Western Railroad Co., although the legal successor of certain other companies whose charters empowered them to fix their own charges, is itself subject to the provisions of the Virginia statute of Jan. 14, 1853 regulating tolls upon railroads; (2) that in the absence of express statutory direction, or of an equivalent implication by necessary construction, *provisions in restriction of the* right of the *state to regulate the affairs of its corporations, do not pass to new corporations succeeding to the property and ordinary franchises of the first grantee*; (3) that a mortgage of the franchises and property of a corporation, made in the exercise of a power given by statute, confers no right upon purchasers at a foreclosure sale to exist as the same corporation. In Covington and L. Turnpike Road Co. *v.* Sandford, 164 U. S. 578, it was held that a grant to each of two new corporations of "the powers, rights and capacities" which had been granted to a corporation which they succeeded, and the property of which is divided between them, does not confer on the new companies the exemption conferred upon the original company from legislation changing the rates of toll, which would prevent the company from earning as much as 14 per cent on its capital stock. See also Mathews *v.* Board Corp. Comm. 97 Fed. Rep. 400; Chicago Min. Traction Co. *v.* Chicago, 199 Ill. 533. But more conclusive than any of the foregoing is the very recent case of San Antonio Traction Co. *v.* Altgelt, 200 U. S. 304, in which it was held that "Any contract exemption from legislative regulation of

rates, possessed by a street railway company chartered before the adoption of the Texas Constitution of 1876, which by §17 of the Bill of Rights, subjects to the control of the legislature all privileges and franchises granted by it or created under its authority, *was lost by the sale of its property on foreclosure, and the acquisition of its franchise under a municipal ordinance, together with that of another company by a new corporation, incorporated since the adoption of such constitution although such ordinance provides that all the rights and privileges previously granted to the old corporation were conferred on the new one, including all the limitations, contracts, and obligations.*" It is thus settled beyond controversy that if *an exemption from state regulation of water rates* was vested in Bullock & Co. and the corporation to which it was authorized by the original contract to assign, no such exemption passed by the foreclosure sale to appellee, a corporation organized thirteen years after the making of such original contract. If an attempt should be made to combat that conclusion by the suggestion that this court has held that the contract right of Bullock & Co. to be free from competition from the city of Vicksburg passed to appellee by the foreclosure sale, the obvious answer is that that right was a contract right belonging exclusively to the City, and as such within its control. On the other hand the exemption in question from State control is a right vested primarily in the state, as to which the city had no right whatever to contract. There is no pretense that the state has ever, either directly or indirectly, granted to this appellee an exemption from its power to regulate water rates.

Appellee may refer to that clause in sec. 178 of the constitution of Mississippi which declares that the right to alter, amend or repeal may be exercised, "*Provided*, however, that no injustice shall be done to the stockholders." In its bill appellee avers:

"3d. Your orator would further show that under these ordinances it is impossible for your orator to do business on account of the fact that in the event it sought to collect its lawful demands from the consumers of water it is liable to be

imprisoned and its business wrecked, ruined and destroyed, and its power to carry on its business is being seriously impaired because its employees are restrained on account of the threat to deprive them of their liberty and publicly disgrace them.

4th. Your orator would further show that its patrons are refusing to pay their water rents and only offering to pay at the rates fixed under said ordinances passed by the defendant, and that your orator thereby has already been damaged in the sum of over twenty thousand dollars (and without relief, bankruptcy of your orator is inevitable). Your orator would further show that the amount in controversy exceeds two thousand dollars exclusive of interest and cost" (Record p. 9).

In reply to those allegations, *appellee having failed to waive an answer under oath*, appellants filed a sworn answer directly responsive to such allegations as follows:

"4. Even admitting the right of complainant to charge as much as fifty cents per thousand gallons for water furnished, the ordinance enacted by defendant fixing rates to be charged where water is not measured by meters, is not thereby affected. The ordinance of 1886 at most relates only to the rates to be charged upon water actually consumed.

"*Further answering it denies that at the rates prescribed by the ordinances herein complained of, it is impossible for complainant to do business as is alleged by paragraph three of its bill, without bankruptcy or other serious damage.*

"It admits that some of its patrons are refusing to pay the rates exacted by complainant, but avers that this is not true to the extent claimed. In this connection it avers that complainant not only claims the power to charge as much as fifty cents per thousand gallons for water, where water meters are used to measure the quantity consumed, but also the power to charge as much as two dollars per month for every meter, whether any water is taken during the month through such meter and consumed, or not.

"It avers that by one of the said ordinances complained of, defendant sought to prohibit complainant from exacting the said sum of two dollars per month where the charge for the aggregate of water passing at that time through the meter and consumed, even if paid for at the rate prescribed by complainant, would be less than that amount, and in cases

where no water at all had been consumed. In that respect it avers that even if complainant has the power to charge as much as fifty cents per thousand gallons, the said ordinance is valid and should be upheld by the Court, because it shows that under no view of complainant's alleged contract rights is it entitled to charge more than fifty cents per thousand gallons, *and that by charging two dollars per month without regard to the water consumed it charges more than fifty cents per thousand gallons, and does great wrong and injustice to the consumers of water.*

"It shows that the consumers have paid for and own the said meters and that complainant has been at no expense whatever about them.

"*It denies that complainant has been damaged in the sum of twenty thousand dollars, or that it has been wrongfully deprived of any sum whatsoever by reason of said ordinances or any of them.*

"It avers that many of the patrons of complainant are not paying the rates charged by complainant because they involve the payment of said minimum meter rate, which made the rate in excess of fifty cents per thousand gallons, and because they were not willing to pay said rate of two dollars per month, irrespective of the quantity of water used by them.

"It avers that complainant would not permit them to pay in any other manner, and that they were not even allowed to pay at the rate of fifty cents per thousand gallons unless they would pay the said two dollars per month, which as heretofore shown, is exacted in violation of complainant's alleged contract.

"It avers that a large proportion of the money which has not been paid by patrons of complainant is because of this conditions of things, and that the complainant is to a large extent the aggressor and wrongdoer, and not this defendant or the consumers of water.

"It further avers that many of the patrons of complainant are taking water by what is called "flat rates" where no meters are used, and where the amount of water consumed is not measured, and that complainant will not allow them to pay the reasonable and just rates which have been in force before the recent increase in rates made by *them*, which has given rise to this controversy, and that it refuses to accept any payment from those taking water under the "flat rate" system unless they will pay the unreasonable and unjust rates now exacted.

"It avers that if the water in such cases could be measured, the rate exacted by complainant would be largely in excess of fifty cents per thousand gallons.

"Inasmuch as the water in such cases is not measured so that the quantity of water used under the "flat rate" system cannot be determined, it avers that by virtue of said Act of the Legislature of 1904 it has the power to fix the rates to be charged under said system, they not being in any wise in conflict with the provisions of said alleged contract of 1886, even if it be in force as claimed by complainants. And it avers that its ordinance fixing the rate on "flat rate" system is valid and binding. It shows that if the complainant desires to obtain the benefit of said alleged contract on the basis of fifty cents per thousand gallons, it could and should put meters into the houses of those now taking water on the "flat rate" system, and thus enable itself to determine the quantity of water consumed by them.

"It avers that the first of the three ordinances complained of, which are entirely separate and distinct, merely provides that complainant shall not be allowed to charge damages for the non-payment of water bills, without previously having presented them to the consumer for payment. And it avers that nothing contained in said alleged contract of 1886 conflicts with the power of defendant to enact said ordinance.

"It avers that said ordinance is just and right, and a proper exercise of its police powers for the protection of the consumers against unreasonable and arbitrary rules and regulations of complainant.

"It avers that of the other two ordinances complained of, one fixes prices for "flat rates" and the other fixes the maximum rates for water passing through meters and consumed. The latter ordinance also prohibits a minimum rate regardless of the water consumed, but allows a charge of twenty-five cents per meter for examining and reading the same where no water is consumed, or where less than twenty-five cents' worth is consumed.

"It avers that even if complainant is invested with all the rights and privileges which were held by the Vicksburg Water Supply Company the only feature in any of said ordinances which can be made a legitimate subject of complaint is that which limits its rights to charge exceeding forty cents per thousand gallons.

"It avers that the provision of the ordinance of 1886 authorizing Samuel R. Bullock & Company, their successors and assigns, to adopt all needful rules and regulations gov-

erning the consumption of water, is not contractual, and that defendant under its police power may lawfully, nevertheless, adopt rules and regulations, and fix water rates to govern the operation of complainant corporation.

"It avers that the injunction granted in said cause number 41 had no further scope than to protect complainant from the acts of defendant against which it was prayed; that the ground of complaint in said bill upon which said injunction was granted was the then alleged purpose of the City of Vicksburg by virtue of the act of March 9th, 1900, to construct its own waterworks; that the said Act was repealed by the Legislature of 1904 at the instance of defendant, and that by reason thereof all rights, privileges and powers which may have been thereby conferred, ceased to have any force or effect.

"It avers that the consumers of water in the City of Vicksburg are entitled to same at reasonable rates; that the complainant corporation is a monopoly in character, and that whatever contract the city may have made with complainant the said consumers are not thereby affected and cannot be required to pay the rates exacted by complainant if unreasonable and unjust.

"It avers that the rates fixed by the ordinances complained of are reasonable and just, and that if they are not by the very terms of the Act of the Legislature of March 15th, 1904, under which they were enacted they are not enforceable.

"It avers that if complainant has suffered damage thereby, it is because of its own conduct, inasmuch as it could have immediately upon the passage of the said ordinance have instituted proceedings to test their validity, but instead of so doing it has remained inactive and demanded its own high rates, and the illegal minimum charge as hereinbefore set out, and has declined to accept any other payment from its own patrons unless they would comply strictly and literally with all of its requirements as aforesaid.

"It avers that now having secured from this Honorable Court a temporary injunction to prevent the enforcement against it of the criminal features of said ordinances it seeks to treat said temporary injunction as a permanent one, and has sent notices to all of its patrons that it will shut off their water and refuse to supply them unless they comply with its rigid and arbitrary requirements, including the payment of said minimum rate of two dollars per month, irrespective of the quantity of water consumed, and of the "flat rates" prescribed by it, although largely in excess of what is reasonable and just. * * *

"It avers that in the early part of 1903, and after the first of January, complainant increased its charges so that they were made exorbitant and unreasonable, and these rates are the ones now sought to be enforced by it.

"When said increase was made it shows that contracts with its patrons who were taking water by the year had already been entered upon for the year 1903, and they refused to pay said increased rates during that year, claiming that the contract of the previous year had been renewed by implication, and that complainant had no right to alter said contract by increasing its rates until the end of that year. If any of its patrons failed to pay the rates demanded from January 1, 1904, it was because they were unreasonable and unjust, and because said patrons were advised and believed that they were under no obligations to pay unreasonable rates.

"It avers that said rates were unreasonable and exorbitant, and that a court of equity should not aid the complainant in its efforts to exact and collect them" (Record pp. 380-385).

Thus by a sworn answer, responsive to the bill, appellants have negatived every allegation upon which appellee relies to prove *either loss, damage or injustice by reason of the ordinances in question.* Strange as it may seem, appellee, after filing a replication to such sworn answer (R. p. 394) failed to take any testimony in order to overcome the sworn allegations of appellant's answer as above set forth. The record contains no note of testimony. The submission is thus described by the circuit court in its final decree, R. p. 402. "This cause coming on to be finally heard at this Jan'y Term, 1906, of this court, upon the original bill of complaint and the answer of the defendant thereto, and all the exhibits which are made such, to said original bill of complaint and said answer, and all of the other pleas and proceedings in this cause, together with a certified copy of the charter of the said Vicksburg Water Works Company which is filed in the record as evidence in the cause, also the petition of the defendant for a modification of the temporary injunction granted in this cause, so that the complainant shall not be authorized to cut off water from its patrons who refuse to pay the rates of complainant, claiming the right to have the injunction modified by virtue of the ordinance of the de-

fendant, fixing water rates; and the motion of complainant to have said injunction granted heretofore made perpetual." It thus appears that after appellants had filed a sworn answer responsive to the bill, which denied its entire equity by alleging (1) that appellee had suffered no damage by reason of said ordinances; (2) that "after the first of January (1903) complainant increased its charges so that they were made exorbitant and unreasonable and these rates are the ones now sought to be enforced by it;" (3) "that said rates were unreasonable and exorbitant, and that a court of equity should not aid the complainant in its efforts to exact and collect them," *appellee submitted its case for a final decree without taking any testimony whatever to overcome the responses of the sworn answer.* The rule is firmly settled that under such circumstances "an allegation responsive to the bill in a sworn answer is presumed to be true, unless rebutted by the testimony of two witnesses, or one witness and strong corroborating circumstances." Foster's Fed. Prac. 1, 236, citing Vigel *v.* Hopp, 104 U. S. 441. *No possible comfort can be drawn from the testimony taken in the preceding case numbered* 41, *as that testimony was closed before the ordinances of April* 20, *and May* 20, 1904, *were enacted.* The result is that the uncontradicted responses of the sworn answer stand before the court as conclusive testimony which destroys the equity of a bill that should have been dismissed. THERE ARE NO FACTS BEFORE THE COURT, EVEN TENDING TO SHOW THAT THE ENFORCEMENT OF THE ORDINANCES IN QUESTION WILL AMOUNT TO A TAKING OF APPELLEE'S PROPERTY WITHOUT DUE PROCESS OF LAW, OR A DENIAL OF THE EQUAL PROTECTION OF THE LAWS. Stanislaus County *v.* San Joaquin and K's R. C. and I. Co. 192 U. S. 201. In rendering a decree in favor of appellee upon such a record the Circuit Judge committed a manifest error. A court of equity cannot and will not aid a party in forcing upon the public exorbitant and extortionate rates.

The water Company, being a *quasi* public corporation and undertaking to furnish to the public a supply of water, is bound to furnish it to them at reasonable rates, irrespective of any contract it may have made with the City.

Directly in support of this point is the decision of the Supreme Court of North Carolina in the case of Griffin *vs.* Goldsboro Water Co., decided in 1898, 41 L. R. A., 240 This authority fully sustains us on this question and we insist that no matter what may be decided in any suit between the City of Vicksburg and the Water Works Company, or by what Court, the consumers of the water and patrons of the Company, not being parties, are not affected thereby.

This is a most interesting case, and covers other points arising in the instant case. It holds that the public are entitled to have water at reasonable rates irrespective of any contract between the City and the Water Company. It is evident that the appellee cannot claim immunity from regulation where water is not measured, because there is nothing in the ordinance on which to base such a claim. If it desires the benefit of its alleged contract right as to charges, it becomes necessary that the water be furnished in such a manner that it can be measured. The provision in Section 13 authorizing it to "make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the waterworks," shows by its terms to have no reference to the matter of fixing rates of charges. If there should be doubt as to this (which there seems to be no room for) the presumption would be against such construction as would take from the City the right to regulate the rates.

V.

The Ordinance of December 8th, 1903.

The ordinance entitled "An ordinance to require waterworks, gas and electric light companies to present bills, before charging damages for failure to pay them when due," approved Dec. 8th, 1903 (R. p. 8) should be considered separately. In reference to that ordinance the sworn and uncontradicted answer of appellants avers "that the first of the three ordinances complained of, which are entirely separate and distinct, merely provides that complainant

shall not be allowed to charge damages for the non-payment of water bills, without previously having presented them to the consumer for payment. And it avers that nothing contained in said alleged contract of 1886 conflicts with the power of defendant to enact said ordinance. It avers that said ordinance is just and right, and a proper exercise of its police powers for the protection of the consumers against unreasonable and arbitrary rules and regulations of complainant" (R. p. 382). The purpose of this ordinance was simply to prevent appellee from cutting off the water pending an inquiry as to the just and proper amount of water bills. Where there is a controversy in good faith between appellants and the appellee, as to the amounts owing by the consumers to the appellee, the appellee should not be allowed to use the power, which it claims, of cutting off the water of its patrons and subjecting them to all the inconveniences incident thereto, as a means of coercing payment of its bills made according to its own figures and calculations, without giving them a day in Court.

The rule that a waterworks or gas company cannot cut off the supply of their patrons as a means of coercing payment of accounts which are disputed, is based upon good reason and equity. It would be an extremely harsh and unjust law to permit such an advantage in one of two contracting parties. It would practically dispense with the necessity of courts to adjudicate the rights of parties, and would give one of them the power to dictate to the other and enforce, whether right or wrong, his construction of the contract and his demands. In support of this position, see:

McIntee vs. Kingston Water Co., 165 N. Y. 27. 7 Am. Dec. in Eq.

Note under Ray vs. Gas Co. 7 Am. Dec. in Eq.

Wood vs. Auburn, 87 Me., 287. 29 L. R. A., 376.

Bienville Water Co. vs. Mobile (Ala.), 33 L. R. A., 59.

Am. W. W. Co. vs. State, 46 Neb., 194. 50 Am. St. Rep., 610.

Sheppard vs. Milwaukee Gas Lt. Co. 6 Wis., 539. 70 Am. Dec. 479.

Turner vs. Revere W. W. Co., 171 Mass., 329. 68 Am. St. Rep., 432.

State vs. Nebraska Tele. Co. (Neb.) 52 Am. St. Rep., 404.

Assuming Section 13 of the ordinance of 1886 to be an irrevocable feature of the contract and now vested in appellee, it was made by the City in its "proprietary" capacity. The ordinances fixing rates were passed by it in its governmental or legislative capacity; therefore, the complainants are not bound nor affected by the contract feature, but are entitled to the enforcement of the ordinances.

As the entire equity of the bill has been destroyed by a sworn answer whose responses have not been overcome by opposing testimony the bill should, in any event, be dismissed. All of which is respectfully submitted.

GEORGE ANDERSON,
HANNIS TAYLOR,
Counsel for Appellants.

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CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 275.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANT,

vs.

VICKSBURG WATER WORKS COMPANY.

BRIEF FOR APPELLEE.

J. HIRSH,
MURRAY F. SMITH,
Solicitors for Appellee.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 26218

(20,226.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 275.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANT,

v.

VICKSBURG WATER WORKS COMPANY, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR APPELLEE.

Statement of the Case.

The history of this Water Works Company, the appellee, is partly written in the law books. For nearly seven long years it has been seeking to maintain the integrity *of a contract,* solemnly entered into with the Mayor and Aldermen of the City of Vicksburg on the 18th day of November, 1886, which it acquired in good faith, and for a valuable consideration, and which was recognized as a binding obligation by the said Mayor and Aldermen of the City of Vicksburg, the appellant, for nearly fourteen years; and only when nearly half of the period of its duration had expired, and

after many thousands of dollars had been expended in the construction and maintenance of an expensive water works' system, and the recent erection of a successful filtering plant, did the appellant begin to search for causes of complaint.

But, commencing with a suit instituted by the City of Vicksburg against appellee in the chancery court of Warren county, State of Mississippi (the bill of complaint in that case being filed on December 7, 1900, and appears on pages 48 to 58, both inclusive, of the record, up to the present time), the appellee has been compelled to battle for its rights and constantly appeal to the courts for protection.

This appellee has had two adjudications in its favor in this court, two in the court below, and one in the Supreme Court of Mississippi, and in all said suits *its contract* with the Mayor and Aldermen of the City of Vicksburg was involved; and yet, after all this expenditure of time and the cost and embarrassment incident to all litigation, it is now gravely stated in the first three lines of the brief of the appellant, "The case is now for the first time presented on its merits," and by one apparent sweep of the pen all the previous battles fought and all the preceding tedious litigation are characterized as involving *only* "preliminary and incidental questions."

If it takes seven years to dispose of "preliminary and incidental questions," what finite mind can measure the time required to dispose of the merits?

In view of this *assumption* in the opening lines of the brief, we deem it proper to review at the outset of the discussion the history of this controversy so far as it bears upon the questions now at issue.

In the bill of complaint filed by the said appellant in the said chancery court of Warren county, hereinbefore mentioned, it was distinctly alleged (Record, p. 52):

"That the rate prescribed in said contract (the one involved in this case) for the use of said hydrants, and the

rates charged by said company against domestic consumers are *exorbitant and illegal* and said board (the appellant) exceeded its power and authority in making any contract stipulating for the period aforesaid said rates.

"That the said Mayor and Aldermen had no right or power to make such contract; that an exclusive grant or monopoly of the kind is in contravention of the public policy of the State and is illegal and void.

"Complainants further show that the contract entered into with Samuel R. Bullock and Company on the 18th day of November, 1886, is null and void and the attempt by said Mayor and Aldermen to make such contract was a gross abuse of their rights and powers" (Record, p. 51).

This bill of complaint in the State court was made Exhibit "Y" to the original bill of complaint filed by the appellee against the appellant in February, 1901, in the Circuit Court of the United States for the Southern District of Mississippi, and which is numbered forty-one (41).

In this bill it is charged:

"And your orator further shows that said suit was commenced by the City of Vicksburg in the chancery court of Warren county, Mississippi, to have declared void said ordinance or contract your orator has with the city. * * * A petition for the removal of said suit to this court was filed by complainant herein because it involved a Federal question and the same is now pending in this court upon motion to remand; a copy of the bill of complaint is herewith filed and marked Exhibit 'Y' and prayed to be made a part hereof."

That this bill of complaint in the State court has been a subject of judicial examination in the litigation in the Federal court is evident. This court in Vicksburg Water Works Company *v.* Vicksburg, 185 U. S., pp. 65 and 79, referring to this original bill of complaint filed in February, 1901, says:

"The bill further alleges that on December 7th, 1900, the city filed a bill in the chancery court of Warren county,

State of Mississippi, against the Vicksburg Water Supply Company, and the Vicksburg Water Works Company, averring, among other things, that the contract entered into with Samuel R. Bullock & Company was null and void, and the attempt by said Mayor and Aldermen was a gross abuse of their rights and powers; that the said Mayor and Aldermen had no right to make a contract for so long a period as thirty years, and beyond their official terms to bind the constituted authorities to pay rents for the said hydrants as therein stipulated; *that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal, and said board exceeded its power and authority in making a contract stipulating during the period aforesaid for said rates.*" (Italics ours.)

Again, this court said on the next hearing of the said case (Vicksburg *v.* Vicksburg Water Works Company, 202 U. S., 453 and 459):

"A bill was filed in the equity court in Warren county, Mississippi, averring that the original contract to which the Water Works Company claimed to have succeeded was null and void; that the Mayor and Aldermen had exceeded their powers in making the contract for thirty years; *that the rates charged to consumers were exorbitant and illegal;* that the Mayor and Aldermen, at a meeting held on November 5, 1900, had resolved that the city no longer recognized any liability under said contract; that the Vicksburg Water Supply Company (a former holder of said contract) and the complainant had no rights in said contract, and the city was entitled to have the same cancelled and annulled." (Italics ours.)

Thus it cannot be questioned that appellant, the originator of this long-drawn-out litigation, had at the very inception of the controversy *denounced* the rates, *both for hydrants* and to private consumers, as *exorbitant and illegal* and beyond the power of the city to make.

This court, in 185 U. S., pp. 65 and 69, also specially says:

"The bill (of complainant) further alleged that the Mayor and Aldermen deny any liability upon any contract for the use of the water-works hydrants."

Appellee, by its amended and supplemental bill in suit No. 41, filed April 21, 1901, (Record, pp. 61 to 64, inclusive), distinctly averred, among other things, as follows:

"3rd. Your orator would further show, as before stated in the original bill of complaint in this cause, the defendant caused its charter to be amended by the legislature of the State of Mississippi in 1886, to provide for the erection and maintenance of a water-works system to supply the said city with water or to contract with party or parties who should build and operate water works, and the city having elected to enter into a contract with S. R. Bullock & Company and assigns, on the — day of November, 1886, to *provide* the *defendant, the city, and inhabitants thereof with water for public and domestic purposes for thirty (30) years, at a stipulated price as agreed upon in said ordinance.*" (Italics ours.) "Therefore, said city by its contract and ordinance * * * are precluded from issuing and selling bonds to build, construct, maintain and operate a water works of its own * * * in competition with your orator against its own contract."

This amended and supplemental bill is made an exhibit to the bill of complaint now under consideration in this court, being designated as No. 79.

In said original bill complainant prayed:

"That the defendant may be enjoined, perpetually, from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business," etc. (Record, pp. 19-20).

Also:

"May it please your honors to grant unto your orators a writ of injunction, issuing out of this honorable court under the seal thereof, directed to the defendant, its officers, attorneys and servants and each of them, enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business," etc. (Record, p. 20).

To the said original bill in suit No. 41 and said amended supplemental bill the defendant, then, the appellant now, interposed what was designated by it as an answer. This answer appears on pages 70 to 84, both inclusive, of the record.

On page 70 the answer commences as follows:

"IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI.

"VICKSBURG WATER WORKS COMPANY
vs.
"THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

"*The Answer of the Mayor and Aldermen of the City of Vicksburg to the Original and Supplemental Bill of Complaint Exhibited against Them in this Court by the Complainant Named Therein.*

"For such answer to so much and such parts of said bill as they are advised it is material or necessary for them to answer, these respondents say:"

The respondents then undertake to set forth their views of the controversy, and to plead their defenses in detail and at length, and on page 77 of the record the following allegations of their answer appear:

"Your respondents admit that the averments in said bill that an act of the legislature was passed authorizing the City

of Vicksburg to issue bonds * * * but respondents say the question of liability of the city to complainant by virtue of the contract entered into with Samuel R. Bullock & Company, which is raised by said resolution, is altogether aside from the scheme and purpose of becoming the owners by purchase or otherwise of a system of water works. THEY SAY THAT SAID ALLEGED CONTRACT WITH SAMUEL R. BULLOCK & COMPANY, IMPOSES UPON THE INHABITANTS OF VICKSBURG AND ITS CORPORATE AUTHORITIES AN ONEROUS AND EXTORTIONATE BURDEN; THAT NO SUCH CONTRACT WOULD NOW BE MADE WITH THE SAID VICKSBURG WATER WORKS COMPANY OR ANY OTHER COMPANY AT THE RATES PRESCRIBED IN SAID ORDINANCE; THAT THEY FAR EXCEED THE AVERAGE PRICE CHARGED FOR WATER IN CITIES SITUATED IN LIKE CONDITION AND CIRCUMSTANCES TO VICKSBURG." (Capitals ours.)

Again (same page):

"That it is immaterial whether the said act of the legislature had been passed or not, or whether your respondents desire to become the owners of water works, it would still be and is the obligation on the part of these respondents, in the discharge of their public duties, TO DENY THAT THEY ARE BOUND TO SAID COMPLAINANTS BY SAID CONTRACT, FOR THEY ARE INFORMED AND BELIEVE AND NOW CHARGE THE FACT, FOR THE MANY REASONS HEREIN SET FORTH, THAT NO LIABILITY EXISTS ON THE PART OF SAID CITY BY REASON OF SAID CONTRACT." (Capitals ours.)

Among the reasons set forth in said answer is the above allegation that said contract imposed upon the inhabitants of Vicksburg an onerous and extortionate burden.

It may be noted in passing that among the other matters disclosed by the record is the peculiarity of the appellant's pleadings. It has no hesitation in demurring and answering at the same time, and on page 83 of the record, containing

a continuation of the said answer, the appellant makes the following averments:

"Respondents, further answering, say that the matters and things contained in complainant's amended and supplemental bill are irrelevant, and immaterial and afford no ground of relief to the complainant, and their legal sufficiency is now submitted to the court and judgment thereof is craved as if formally demurred to."

And then, apparently being somewhat dissatisfied with this challenge of the legal sufficiency of the amended and supplemental bills, appellant, continuing to answer, further says (Record, p. 83):

"And respondents, further answering, say that there does not appear any ground for the equitable relief sought by the complainant by reason of the matters and things averred in its original and amended bills; and now, having fully answered, defendants pray to be dismissed hence with their reasonable costs and with damages," etc.

This answer, although oath was waived, was sworn to and filed on June 21, 1901.

The said answer also admits "that a suit was instituted in the chancery court of Warren county, Mississippi, against complainant to have such contract declared void."

It will be thus observed that the appellant has never hesitated to assert with fullness and emphasis that the rates were illegal, extortionate, or exorbitant, and that the city was without power to make the contract authorizing such rates, and that in all the pleadings of the respondent, or the appellant, these issues were injected by it in some form, whenever an opportunity to do so was presented.

In the original bill of complaint, No. 41, as aforesaid, the *entire contract* between the Mayor and Aldermen of the City of Vicksburg and S. R. Bullock & Company was made an exhibit, under the designation of Exhibit "B," and this contract in its entirety has been therefore constantly before, not

only the lower court, but this court, when the adjudications in favor of appellee were made. This contract expressly authorized S. R. Bullock & Company and assigns, as stated in the amended and supplemental bill, to supply water to the city of Vicksburg, in Warren county, Mississippi, and its inhabitants, and this contract appellee owns.

By section 3 it is stipulated that the rental for the first one hundred hydrants shall be at the rate of $65 per annum, and all in excess of one hundred shall be supplied at an annual rental of $50.

Section 13 is as follows (Record, p. 28):

"The said Sam'l R. Bullock & Co., their associates, successors or assigns, shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works and to make such rates and charges for the use of said water as they may determine, provided that said rates and charges shall not exceed fifty cents for each thousand gallons of water."

The city having in its own original bill made a violent attack upon the *rates prescribed in the contract,* and having repeated, in effect, said charge in its answer to the original and amended bills in No. 41, the appellee thought it proper to meet this accusation *once for all,* although the *burden rested upon the appellant to prove the allegation.*

Therefore Mr. M. C. Crumpler, the manager of the appellee's water-works system, when on the witness stand February 29, 1904, was asked:

Int. 32. "Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer" (Record, p. 263).

Mr. Crumpler, in responding to this interrogatory, says, among other things (Record, p. 268):

"A. The hydrant rentals and rates named in the contract between the city and the water works company, and the regulations as per Exhibit 'H,' a part of this deposition, are reasonable, and I have examined the city records to ascertain if there were any minutes, resolutions or ordinances of any kind, complaining of or notifying the water company or any of its predecessors, that the contract between the city and S. R. Bullock & Company was not being complied with in any particular, prior to November 7th, 1900, and I find there is none; and the city clerk also tells me that there is nothing prior to that time."

That the appellant regarded Mr. Crumpler as an important witness is evident from the fact that it propounded to him *240 cross-questions*, and all these cross-interrogatories appear on pages 269 to 290, both inclusive, of the record.

It is apparent that the attorneys for the appellant were closely scrutinizing Mr. Crumpler's answers, for after they had given utterance to 238 cross-interrogatories they concluded to call attention to Mr. Crumpler's answer to interrogatory 32, from which we have hereinabove quoted, for they asked Mr. Crumpler:

"Q. I notice, Mr. Crumpler, you say in your answer to direct interrogatory No. 32, that 'our company has to use a good deal more coagulants to filter and purify water than it would if the sewer discharge was not let out at a point above our pumping station, thereby making it cost a great deal more to operate the filter plant.' Do I understand from this that part of the sewerage matter of the city of Vicksburg is pumped into your settling basins?"

to which Mr. Crumpler answered:

"A. I don't think there is any question but what that is true, and too true to be good."

All of this appears on page 290 of the record.

Therefore it is evident that the city not only willingly

abandoned any attempt on its own part to prove that the domestic rates were extortionate and illegal, but when they had an opportunity to interrogate Mr. Crumpler upon that subject, and when he had unqualifiedly stated that the hydrant rentals and rates named in the contract were reasonable, they passed this testimony by in silence. Exhibit "H," to which Mr. Crumpler refers and which is made a part of his deposition, appears on pages 303 and 304 of the record.

We deem it unnecessary to present this exhibit in full, but we call the court's attention to the following terms and regulations therein contained:

"Per 100 gallons:

"Domestic or residence and commercial meter rates for a daily average consumption of 1,000 gallons or less ..... 4½c.
"From 1,000 to 2,500 gallons or less ..... 3½c.
" " 2,500 to 5,000 gallons or less ..... 2½c.
" " 5,000 to 10,000 gallons or less ..... 2c.
" " 10,000 to 25,000 gallons or less ..... 1½c.
" " 25,000 to any amount upwards ..... 1¼c.

"Regulation.—For each premises of an average daily amount of not less than 150 gallons, or 6¾ cents for residences, and 185 gallons, or 8⅓ cents for commercial uses. These amounts cover all expense of reading meter monthly, together with cleaning and light repairs of meter by the Water Company when necessary. Customers to furnish meter."

Then follow explicit directions how to test the meter, and concludes (Record, p. 304):

"The intention of the above is to put it into the hands of every consumer to satisfy himself of the accuracy of his bill at any time."

It is therefore beyond dispute, we submit, that not only did the city itself put in issue the right to charge the rates prescribed by section 13 of the contract, but assumed the

affirmative, and expressly denounced said rates as illegal, onerous, and exorbitant and far in excess of the rates charged in other cities the size of Vicksburg; and yet, when put to the test, the city not only absolutely failed to meet this charge with proof, but practically abandoned its contention in this respect and permitted Mr. Crumpler's testimony to stand unchallenged.

It is apparent from Mr. Crumpler's testimony that, notwithstanding his company was vested with the power to charge 50 cents per thousand gallons, that his charges as above set forth only ranged from 45 cents per thousand gallons down to 12½ cents per thousand gallons, and that his monthly minimum charge was $2 for residence and $2.50 for commercial uses, which charge, however, covered all expense for the reading of the meter monthly, "together with cleaning and light repairing of meters by the Water Company when necessary."

Thus the Water Company, without any obligation on its part to do so, assumed the burden of proving the reasonableness of its rates, and the city, by its silence and failure to introduce proof, under all the rules of fairness and common justice and law, must be held to have confessed that said rates were legal, reasonable, and proper.

The act of the Legislature of the State of Mississippi approved March 19, 1904 (hereinafter set out), authorizing the regulation of rates by municipalities in certain cases, became effective on the day of its approval, and therefore was in full force for *60 days* prior to the decree of May 18, 1904, and *46 days before the testimony of appellant closed*—a fact of which the learned court below, as well as this court, had judicial knowledge, and if available at all to appellant it was available *on the day* it became a law, and it was *then* the duty of appellant to make it available, and not to remain passive or indifferent and assume the risk of an adverse decree with the confident expectation of destroying that decree by thereafter pointing to a law as a defense, or

interposing it as a shield or weapon to the enforcement of said decree, which was binding, if binding at all, upon all parties, and, as stated, available to appellant many days before the rendition of that decree.

Appellant also charged in its answer in case No. 79 (Record, pp. 384-385): "That in the early part of 1903, and after the first of January, complainant *increased its charges*, so that they were made exorbitant and unreasonable, and these rates are the ones now sought to be enforced by it."

Again: If any of its patrons failed to pay the rates demanded from January 1, 1904, "it was because they were unreasonable and unjust, and because said patrons were advised and believed that they were under no obligation to pay unreasonable rates."

The city had already contended in its bill, filed in December, 1900, and in its answer in case 41, in July, 1901, that the rates were illegal, extortionate, or exorbitant *before* the alleged increase "in the *early part* of 1903;" so these allegations by frequent reiteration, without proof, have lost potency and vigor; and yet the answer in case numbered 79, because sworn to, and without other support, is relied on, as will be hereinafter shown, by appellant to show the rates were unreasonable. Yet Mr. Crumpler, *fully a year* after said alleged increase in rates, *proved* without challenge or contradiction that appellee's rates were reasonable. (See Crumpler's deposition, February 28, 1904—Record, pp. 269 to 304.) And still appellant again sought to reopen the controversy, settled by a final decree, by a suit in the State court, and also again in the Federal court.

Appellant should not be permitted to remain dormant and acquiescent in a Federal court of competent jurisdiction, which recognized and upheld the contract, with the expectation, if the decree was unsatisfactory, of *rescinding* it by appeal to a State court, as it sought to do in its bill filed in the chancery court of Warren county, Mississippi, January 9, 1905, made Exhibit A to its answer (Record, pp.

386-391), or of renewing the litigation in that Federal court, as it vainly attempted to do in said answer.

When, therefore, case No. 41 reached a final determination in the circuit court, the testimony of Mr. Crumpler was before that learned court, and the failure of the city to introduce any sort of proof to show that the rates were unreasonable was conspicuously apparent to that learned court; and the failure of the city to point out any "inherent want of legal validity" in the contract, as required by this court in Vicksburg Water Works Company *v.* Vicksburg, 185 U. S., p. 65, was also noticeable; and the learned court below, in view of this glaring failure of the city to maintain any of its numerous pretended defenses to the contract, so far as the facts are concerned, and its failure to appeal to any law annulling or impairing the said contract, decreed, among other things, as follows (Record, pp. 3 and 4):

"First. That the defendants, The Mayor and Aldermen of the City of Vicksburg, be and are hereby perpetually enjoined from abrogating and taking away, or from assuming to abrogate or take away, the franchises or contract rights of complainant *under* and by virtue of the ordinance of November 19th, 1886.

"Second. That said ordinance, contract and franchise be and is hereby decreed and held to be in every respect legal, valid and enforceable, and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise *in any of its parts*, or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by complainant thereunder." (Italics ours.)

"Sixth. That the said defendant be and is hereby required to pay all moneys due or owing, or that may hereafter be due and owing to said complainant under and by virtue of said ordinance, contract and franchise.

"Seventh. That the said defendant be and is hereby perpetually enjoined from making or adopting any resolutions, or ordinance refusing to pay the contract price of water fixed by said ordinance, contract and franchise until the expiration of the period prescribed in said ordinance, contract and franchise."

This decree was rendered on the 18th day of May, 1904. From that decree an appeal was prosecuted to this court, as will be shown in Vicksburg *v.* Vicksburg Water Works Company, 202 U. S., p. 453.

This court, after referring to its former opinion, says (p. 460):

"Upon the case going back to the circuit court an answer was filed raising issues as to whether the complainant had accepted and performed the agreement in its contract to supply water to the city, and denying the right of the complainant to have and to own the contract, and the authority of the city to make an exclusive contract, and detailing other matters not necessary to further set forth.

"Certain questions of fact as to the character of the water supplies by the complainant, the pressure maintained, and SIMILAR QUESTIONS WERE DECIDED BY THE CIRCUIT COURT IN FAVOR OF THE APPELLEES." (Capitals ours.)

Among the "similar questions," we submit, were *the rates and regulations*. In the "rejoinder brief for the appellee on the merits," the counsel for the appellee, among other things, contended:

"We submit it was proved beyond successful denial—

"First.

"THE QUALITY

"of the water was of the best character.

"Second.

"THE QUANTITY AND THE PRESSURE

"in every respect satisfied the terms of the franchise.

"Third.

"THE RATES AND REGULATIONS

"were by the uncontroverted testimony shown to be reasonable, and for all practical purposes the appellant made no effort to dispute the fact thus established by proof, that they were reasonable."

This court then concludes, referring to the "similar questions":

"AN EXAMINATION OF THE RECORD MAKES IT SUFFICIENT FOR US TO SAY THAT WE FIND NO REASON FOR DISTURBING THE CONCLUSION OF THE CIRCUIT COURT UPON THESE QUESTIONS" (Record, p. 460).

We again submit that these "similar questions" embraced the *rates* and *regulations*.

This court thus announced its conclusion (p. 472):

"We find no error in the decree of the circuit court *enforcing the contract rights of the complainant* and enjoining the city from erecting its own works during the term of the contract but error in granting a mandatory injunction as to the sewer, and in that respect the decree will be modified, and, as so modified, affirmed." (Italics ours.)

Under this decree the mandate of this court, when forwarded to the court below, necessarily directed the attention of the court below to the fact that its decree was thus *affirmed,* except so far as the mandatory injunction was concerned, and that the terms of the decree should therefore be enforced.

When the case reached this court on the second appeal, being the appeal from the final decree, an opportunity was given the city to point out some "inherent want of legal validity" in the said contract, or to furnish some reason based upon the facts why the court below erred in restraining the defendant from rescinding or denying liability under said contract or any of its parts, or from disturbing or interfering with the rights of complainant thereunder, or from making ordinances or resolutions refusing to pay the contract price fixed by said ordinance or franchise, or from refusing to pay hydrant rentals; and the city, *then* as *now,* argued that the *rates* were subject to regulation; that the act

of the legislature of the State of Mississippi approved March 19, 1904, and the constitution of 1890 were applicable.

The city on the second appeal filed seven assignments of error, but four of them, being a majority thereof, were, however, so transparently without merit that they required no extended consideration and were adjudged insufficient.

The fifth assignment of error was as follows:

"The said court erred in rendering a final decree against respondent, because the said decree is contrary to the law and the facts as stated in the pleadings and proof above set out."

Under this assignment the city had, as stated, an opportunity to point out any "inherent invalidity of the contract" presented by it to the court below, or to show wherein the court erred on the facts; but before this court, as to the facts the city was practically mute, and contented itself in discussing what it then considered were the only matters of vital importance remaining at issue, as above shown.

We have thus shown, we submit, that the power of the Water Works Company under section 13 of the contract and the reasonableness of its rates were directly challenged in the pleadings, and that the said contract, including section 13, was upheld by the court below, and the rates found reasonable, and that the decree of the court below was in all respects except one *affirmed* here. It is therefore extremely difficult to understand how it can be contended that in all these proceedings *the merits have been ignored* and only "preliminary and incidental" questions decided, as assumed in the first few lines of the brief of the appellant.

But we will pursue the history of the case further, as developed by the opinions of this court.

When the case first reached this court, it is true a *question of jurisdiction was presented;* but in the determination of the question of jurisdiction the court necessarily made an investigation of the merits—to a certain extent, at least. In

order to ascertain whether the circuit court had jurisdiction, it became necessary to determine whether there was a contract—a legal contract, a binding contract—in existence, which had been assailed by the city authorities. If no such contract existed, there was no merit in the contention presented by the original bill and the jurisdiction could not attach. It was essential, we repeat, to the jurisdiction, that there should have been a legal and binding contract *in esse*, and therefore this court set out the contract in full in its opinion and necessarily made an investigation thereof.

This court says (185 U. S., p. 81):

"After the lapse of that long period (nearly fourteen years) and the continuous acquiescence of the city in the contract as a valid and subsisting one, the city, according to the allegations of the bill, now insists that the said contract was invalid, because in excess of its powers to contract, and is proposing to borrow money to erect and maintain water works of its own, and become a competitor with the complainant for the custom of the consumers of water."

The Court further said, (page 80):

"The bill prays for an injunction to restrain the defendant from assuming to abrogate and take away the franchises and contract rights of the complainant," etc.

Further:

"It cannot be seriously contended that under the act of March 18th, 1886, authorizing the city to provide for the erection and maintenance of a system of water works, and to contract with a party or parties to build and operate water works, and under the ordinance of the city of November 18, 1886, providing for a supply of water to the city and its inhabitants by contracting with Samuel R. Bullock & Company, their associates, successors and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Company, no contract was entered into. The subject-matter of the contract was within the powers of the city to make; THE TERMS WERE EXPLICITLY SET FORTH IN THE ORDINANCE; THE WORKS ERECTED WERE APPROVED BY THE CITY AND THE RESPECTIVE OB-

LIGATIONS CREATED BY THE CONTRACT WERE DULY COMPLIED WITH, WITHOUT QUESTION OR COMPLAINT, FOR A PERIOD OF FOURTEEN YEARS." (Capitals ours.)

So, then, when the contract as *an entirety* was under consideration by this court on the very first appeal, it was adjudicated that "the subject-matter of the contract was within the powers of the city to make," and that "the terms were explicitly set forth in the ordinance," and that it could not be seriously contended that under the act of the legislature and the ordinance of the city "no contract was entered into."

Therefore, in the early history of this controversy, there is a clear statement that there *was* a contract entered into, and that its subject-matter was within the power of the city to make, and that its terms were explicitly set forth in the ordinance; and this was held, notwithstanding that the city had been contending in its own bill, as quoted by this court, that the Mayor and Aldermen "had no right to make a contract for so long a period as thirty years, and beyond their official terms to bind constituted authorities to pay rents for the said hydrants as therein stipulated; that the rates charged for use of said hydrants against domestic consumers are exorbitant and illegal, and said board exceeded its power and authority in making any contract stipulating during the period aforesaid for said rates."

And then the court held, as shown by its first syllabus:

"By the act of March 18th, 1886, the City of Vicksburg was authorized to provide for the erection and maintenance of a system of water works and the contract made in accordance with its provision was within the power of the city to make, and the subsequent legislation, State and municipal, set forth in the bill, impairs the contract rights of the water company, within the protection of the Constitution of the United States, UNLESS THE CITY CAN POINT TO SOME INHERENT WANT OF LEGAL VALIDITY IN THE CONTRACT." (Capitals ours.)

Thus this court warned the complainant that the contract would stand unless it could point out "some inherent want of legal validity" in the contract, "or to some such disregard by the Water Works Company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract," and the case was remanded for proceedings on its merits.

When it reached the court below, there was not the slightest pretense on the part of the city to "point out the inherent invalidity of the contract," nor was there the slightest effort made to defeat the bill on its merits, so far as the facts are concerned; and, we have shown, we submit, it was proved beyond controversy that the supply, pressure, quantity, and quality of water, as well as the rates and regulations, were not subject to impeachment.

The court below therefore entered the final decree from which we have hereinbefore quoted.

When it again reached this court (202 U. S., p. 453), the city not only failed to "show to the satisfaction of the court any inherent invalidity," or to establish the fact that the court below erred on the facts, as hereinbefore stated, although it undertok to argue *then*, as it is doing *now*, that this contract was absolutely subject to legislative control.

We quote now from brief of counsel for the city, four of them being named in the report, as condensed by the learned reporter, on pages 454 and 455.

The city contends:

"But if the contract was assignable and passed to the Water Works Company without the consent or approval of the appellant, it passed subject to the power of the State to regulate rates whenever it chose to do so, and regulating rates would not impair complainant's contract," (citing Stone *v.* Trust Company, 116 U. S., 636).

2d. "The State could abandon its governmental right and deprive itself of the power to regulate its corporations, but only by apt words, about whose meaning there can be no doubt. The legislative grant by the State to the city does

not evidence any purpose on the part of the State to deprive itself of the power to fix and regulate rates to be charged by the party or parties to whom the contract should be let" (citing, among other cases, Water Company *v.* Fergus, 180 U. S., 624; Stanislaus County *v.* San Joaquin Co., 192 U. S., 201, which cases are again cited in the brief on this appeal).

3d. "Appellee can exercise no powers prohibited by the constitution and laws of Mississippi. Its charter was and is subject to alteration, repeal or amendment, and has been amended by the act of 1904. It cannot complain of any of these laws which were in existence when it accepted its charter. Its rights and privileges are fixed by these laws and the decree of the court, which held, in effect, that they were not, is erroneous" (citing a number of cases, including the cases above mentioned—180 U. S., 702; and 192 U. S., 20).

And in another part of the brief counsel cite the Joplin case, 191 U. S., 150, and the Freeport case, 180 U. S., 587, which is also again urged upon the attention of the court in the present brief.

Yet this court, as we have shown, upheld the decree of the court below in every respect except that part relating to the sewer.

To condense, we submit it cannot be successfully denied that this court has held, first, that there was a valid contract in existence; second, that the subject-matter of the contract was within the corporate power of the city to make; third, that the contract as a whole was set out in the opinion of the court and its terms declared to be explicitly set forth; that the works erected were approved by the city, and the respective obligations created by the contract were duly complied with, without a murmur by complainant, for a period of nearly fourteen years; that the character of the water prescribed was supplied by the company and the quantity required was supplied; that the pressure was maintained, and we submit that the rates and regulations were reasonable; that the constitution of 1890 did not impair this

contract, and that the Vicksburg Water Works Company acquired the contract under the ordinance of 1886 and the laws then in force, and that the constitution of 1890 and the subsequent legislation of the State of Mississippi did not affect the validity of said contract.

Therefore, if we have not reached an *adjudication on the merits,* all this tedious, prolonged, and vexatious litigation can be characterized as an idle ceremony.

It is, however, now gravely contended that this litigation has not ceased; that the Water Works Company has practically acquired no rights of any value throughout these seven long and weary years, except the right to prevent the City of Vicksburg from building a water works of its own and thereby lowering the rates charged by the Water Company and entering into competition for the business of the private consumers, and it is now insisted, notwithstanding all that we have hereinabove enumerated, that the right to charge the rates authorized and prescribed by section 13 of the contract, to wit, not to exceed a maximum of 50 cents per thousand gallons, has never been really vested in this Water Company, or its predecessors, and that under the subsequent ordinances of the City of Vicksburg, approved the 20th day of April, 1904, wherein it attempts to fix and prescribe the maximum rates for use of water in the City of Vicksburg, any effort of the Water Company to enforce its rights under said section 13 subjects it and its officers and agents to fine and imprisonment, so far as a corporation can be imprisoned.

Notwithstanding these two appeals to this court and a final decree in the learned court below on the 18th day of May, 1904, which was affirmed by this court, as stated, the appellant, on the 18th day of April, 1904, passed two ordinances, approved April 20, 1904, one entitled "An ordinance to fix and prescribe maximum rates and charges for water supplied to the City of Vicksburg, where measured by meters, and for other purposes," and the other entitled "An ordinance to fix and prescribe maximum flat rates and charges

for the supply of water to consumers in the City of Vicksburg, and for other purposes." These two ordinances appear on pages 5 and 8, both inclusive, of the record.

By the first ordinance the highest maximum rate allowed was 40 cents per thousand for 100 to 1,000 gallons per day *actually used*, and then on a descending scale the lowest price permitted per thousand gallons and over per day was 15 cents per thousand, all for water *actually used*. A maximum charge of 25 cents per month for inspecting and reading meters was permitted, but all meters "shall be put in, installed, and maintained at the expense of the Water Company, except as to said 25 cents monthly, above allowed."

For failure to comply with this first ordinance, on conviction, the Water Company, its officers or agents, shall be fined not less than $50 nor more than $200, or be imprisoned in the city workhouse or county jail not exceeding thirty days, or both, for such offense.

By the second ordinance it is provided that where no meter has been put in or attached for ascertaining the quantity of water, certain maximum rates are provided, and for failure to comply with this ordinance the Water Company, its officers or agents, on conviction, shall be fined not less than $50, or be imprisoned in the county jail or the city workhouse for not over thirty days for each offense. This ordinance was also approved April 20, 1904, and the date as appears in record, to wit, May 20, 1904, is a typographical error, as clearly shown in the decree now under review.

There was also an ordinance which was approved on the 7th day of December, 1903, which appears on page 8 of the record, which provides for the presentation of bills before a charge can be made for damages, and also provides for a fine in the event of a violation of this ordinance.

It is probable that the two ordinances first above named were passed under the assumption that the city had the right to enforce such ordinances by virtue of an act of the

legislature of the State of Mississippi approved March 19, 1904, which is as follows:

"SECTION 1. *Be it enacted by the legislature of the State of Mississippi,* That the corporate authorities of any city, town or village now or hereafter incorporated under any general or special laws of this State, in which any individual, company or corporation has been or hereafter may be authorized by said city, town or village to supply water, electric light or gas to said city, town or village, or the inhabitants thereof, be and they are hereby empowered to prescribe by ordinance maximum rates and charges for the supply of water, electric light or gas furnished by such individual, company or corporation to such city, town or village, or the inhabitants thereof, such rates and charges to be just and reasonable. And in case the corporate authorities of any such city, town or village shall fix unjust and unreasonable rates and charges the same may be reviewed and determined by the circuit court of the county in which said city, town or village may be; *Provided,* That this act shall not be construed so as to *impose* (impair) the effect or obligation of any valid or binding contract with any water works company, electric light company, or gas company now existing or heretofore made with any individual, or water company, electric light or gas company."

"SEC. 2. *That this act shall be in force and take effect from and after its passage*" (Act Miss. 1904, p. 231).

The appellee having had its contract sustained, as stated, in both the circuit court and in this court, and finding that it and its officers and agents were liable to be subject to enormous fines and prolonged imprisonment by virtue of said ordinances of April 18, 1904, approved April 20, 1904, on the 7th day of January, 1905, filed its bill of complaint in the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, at Vicksburg, wherein it stated in a narrative form the history of its previous litigation, making as an exhibit to its bill all of the previous pleadings, evidence, and decrees and all the previous pleas and proceedings and setting forth in full the above

three ordinances, and prayed "for an injunction and decree thereon restraining this defendant (the appellant) from attempting to enforce these ordinances passed by the defendant, and annulling the same and holding them for naught, and requiring them to do and perform their contract made in 1886, as aforesaid, in this respect, and from in any manner interfering with your orator's contract rights under said contract." It also prayed for general relief.

On the 11th day of January, 1905, the learned court below granted a temporary restraining order, which appears on page 374 of the record.

On February 4, 1907, the appellant filed a petition which appears on pages 417 and 418 of the record.

On or about February 7, 1905, the appellant filed its answer, which appears on pages from 377 to 385, both inclusive, of the record, and also filed certain exhibits.

On the 24th day of February, 1905, being the vacation, so far as the Circuit Court at Vicksburg is concerned, the learned court below granted a decree perpetuating said injunction, which appears on pages 393 and 394 of the record.

On the 3d day of July, 1905, the appellee filed its general replication, which appears on page 394 of the record.

On the 3d day of January, 1906, being a day of the January term, 1906, of said Circuit Court at Vicksburg, the court rendered its final decree, from which we quote:

"This cause coming on to be finally heard at this January term, 1906, of this court, upon the original bill of complaint, and the answer of the defendant thereto, and all the exhibits which are made such, to said original bill of complaint and said answer and all the other pleas and proceedings in this cause (which necessarily included the said replication), together with a certified copy of the charter of the said Vicksburg Water Works Company, which is filed in the record as evidence in the cause; also the petition of the defendant for a modification of the temporary injunction granted in this cause," etc.

The decree is set forth in full in the record, pages 402, 403.

From this decree appellant prosecuted this appeal, its petition for appeal being filed March 26, 1906.

With said petition it has filed twenty-seven assignments of error. These assignments of error have not been mentioned and argued specifically and in detail by the appellant, and it therefore becomes unnecessary to refer to all of them specifically and in detail in this brief.

ARGUMENT.

We are informed by the brief of appellant, page 29, that "the sole and only basis upon which appellee rests its claim of exemption from the right of the legislature of Mississippi to regulate water rates is section 13 of the ordinance of November 18, 1886, set out in the record, page 28."

We will, however, undertake in our own way to present the contention of appellee.

I.

Res Judicata.

The questions now at issue have already been heretofore conclusively adjudicated and are no longer open for investigation and determination here again.

In other words, we maintain in the very commencement of our argument that all the questions now claimed by appellant as still subject to review are *res judicata*.

We respectfully contend that no case can be properly tried by installments; that no complainant or defendant can speculate with judicial decisions; that when a defendant or complainant once has a standing in court to uphold or to annul a contract or any other solemn undertaking, that it is in-

cumbent upon both parties to the litigation to formulate, present, and seek a final disposition of all material issues involved; that when a contract is presented for consideration in its entirety, and when the owner of the contract prays that the other party to the contract should be prohibited from annulling it, destroying it, or impairing it, if the other party then has any real or substantial defenses known to him upon the basis of which said contract can be assailed, it is the bounden duty of that party to interpose such defenses—not one, but all—and, failing to do so, should not thereafter be permitted to reopen the controversy to interpose defenses known to him and existing at the time the contract is under consideration and an adjudication of its validity is sought.

All this, we respectfully submit, is elementary. But in view of the position taken by the appellant now, assuming without question the right to try this case again upon what it calls the "merits," we deem it proper to refer and cite some of the numerous cases on this branch of the law. The author of the American and English Encyclopædia of Law, vol. 24, pp. 781 and 782 (2d ed.), thus states the law:

"The rule is well settled that a judgment of a court of competent jurisdiction, delivered upon the merits of a cause, is final and conclusive between the parties in a subsequent action upon the same cause, not only as to all matters ACTUALLY LITIGATED AND DETERMINED IN THE FORMER ACTION, BUT ALSO AS TO EVERY GROUND OF RECOVERY OR DEFENSE WHICH MIGHT HAVE BEEN PRESENTED AND DETERMINED THEREIN. This rule is applied both at law and in equity." (Capitals ours.)

He cites under the heading "MATTERS WHICH MIGHT HAVE BEEN LITIGATED" cases decided in England, by this court, and the supreme courts of Alabama, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland,

Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin; and under the heading "MATTERS OF DEFENSE WHICH MIGHT HAVE BEEN PLEADED" cases decided by this court and by the supreme courts of Alabama, Iowa, Mississippi, New York, South Carolina, Utah, and Vermont.

So it would appear that thirty-one States, besides the Federal courts, have given enunciation to this principle.

Among the leading cases in this court is Cromwell *v.* County of Sac, 94 U. S., 351. In that case the court said:

"In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter *which might have been offered* for that *purpose*. Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground *which might have been presented*, is strictly accurate, when applied to the demand or claim in contro-

versy. Such demand or claim having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever." (Italics ours.)

Thus, we have a binding authority that a judgment, and of necessity a decree, "is a finality as to the claim or demand in controversy * * * not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

In this case, as we have shown IN OUR STATEMENT OF THE CASE, the complainant not only prayed for general relief in its original bill, but specifically prayed that the city be enjoined "from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business, and to destroy its credit, and the value of its property," etc., and asked for a writ, directed to the defendants, "enjoining and restrainmg them from assuming to abrogate and take away the franchises and contract rights of complainant," etc., and in its bill it set out as an exhibit the entire contract, making an exhibit also of the bill of complaint first filed by the city in the State court; and the *answer of defendant*, as well as said bill filed in the State court, set forth and charged the illegality of the contract; the want of power of the city to make such a contract, and expressly maintained that the rates were extortionate and exorbitant. A final decree was rendered, after the issues were presented and proof taken, sustaining the contract as a whole and enjoining the defendant from rescinding or annulling it in any of its parts; and this decree was affirmed by this court (202 U. S., 453).

The *matter in issue*, the *claim of complainant*, was that it had *a contract*— not *a part* of a contract, but *a whole* contract—and that it desired to prevent the city from interfering with *that* contract; and the city, notwithstanding it

had an abundance of opportunity to show, if it could, that the contract was "inherently invalid," and that its charges for water were extortionate and exorbitant, practically submitted to a final judgment without any defense, so far as the proof was concerned, upon the question of the reasonableness of the rates raised by itself, and particularly had an opportunity as shown, to rely on its own two ordinances of April 20, 1904, and said act of March 19, 1904, and never at any time satisfactorily responded to the suggestion of this court to point out any "inherent invalidity in the contract" which could be upheld in a court.

Now, when the contract has been sustained as *a whole*, and not as *a part*—when it has been under review for six or seven years and upheld in every court where it has been assailed—it is sought to *again* assail the contract by alleging in effect that although it has been proven and adjudicated that the rates of the Water Company are reasonable, yet we propose to investigate this matter again at our leisure, and although the contract as a whole has been declared to be legal and valid and binding, yet we now consider that there is some "inherent invalidity" therein, and we now propose to undo what has been done and destroy the contract, by insisting that the city now has the right to regulate the rates therein prescribed.

If this contention can be successfully maintained, it seems to us that the doctrine of *res judicata* is completely emasculated.

The final decree in case No. 41 was rendered, as we have shown, on May 18, 1904. The act of the legislature of the State of Mississippi, under which these alleged ordinances were attempted to be passed, was approved March 19, 1904.

The case in this court was submitted December 13, 1905, fully twenty-one months after the passage of said act of the legislature, and this court, as is stated in the brief of appellant (being among the few things in which we agree with the appellant), "in the exercise of its appellate jurisdic-

tion over the lower courts of the United States, * * * takes judicial knowledge of the laws of all the States."

Liverpool & G. W. Steam Co. *et al. v.* Phœnix Insurance Company, 129 U. S., 445.

Therefore, if the *act* had any material bearing upon the controversy, which we deny, it was available to the city in the lower court, *before the rendition* of the final decree, and therefore available here; and indeed the city, by its city attorney, Mr. H. C. McCabe, *earnestly pressed* upon this court the *question* as again pressed here now, first, that the State of Mississippi had not parted with its right to regulate rates and that this act of 1904, under which said ordinances were sought to be made effective, controlled the contract, and, second, that under the constitution of 1900 the contract was subject to legislative control.

It is pertinent to recall the argument of Mr. McCabe in this connection.

He says (p. 33):

"We contend that it (the contract) passed subject to the sovereign right and power of the State of Mississippi to fix and regulate rates to be charged to the city AND TO THE INDIVIDUAL CONSUMERS OF WATER WHENEVER IT CHOSE TO DO SO, AND THE FIXING AND REGULATING OF SUCH RATES WOULD NOT IMPAIR COMPLAINANT'S CONTRACT" (Capitals ours), citing Stone *v.* Farmers' Loan & Trust Company, 116 U. S., 636, and Providence Bank v. Billings, 14 Peters, 514.

Again, he says (p. 33):

"Of course the State could, if it desired to do so, abandon its GOVERNMENTAL right and deprive itself of the power to regulate its corporations, but it must be done by apt words, about whose meaning there can be no doubt; and we insist that the legislative grant by the State to the City of Vicksburg 'to provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with the party or parties to build and operate

a water works,' does not evidence any desire or purpose on the part of the State of Mississippi to deprive itself of the power to fix and regulate rates to be charged by the party or parties to whom the contract should be let to build and operate a water works. This contention is, we believe, sustained by the following authorities:

"Collins *v.* Sherman, 31 Miss., 679.
"Vol. 9, Rose's Notes, 29 (Mun. *v.* Ill., 94 U. S., 114).
"R. R. *v.* Stone, 116 U. S., 307-347.
"Norfolk *v.* Pendleton, 156 U. S., 667.
"San Diego *v.* National City, 174 U. S., 739.
"Owensboro *v.* Owensboro W. W. Co., 191 U. S., 358.
"Rogers Park Water Co. *v.* Fergus (1900), 180 U. S., 624.
"Stanislaus County *v.* San Joaquin C. & I. Co., 192 U. S., 201.
"Rushville *v.* Rushville, 15 L. R. A., 321, and note, 322.
"Knoxville W. W. Co. *v.* Knoxville, 189 U. S., 434."

It is significant to notice that these precise contentions are again made here on *this* appeal, and a number of these cases, particularly the Rogers Park Water Co. *v.* Fergus case and Stanislaus County *v.* San Joaquin C. & I. case, 192 U. S., 201, are again relied upon here.

Mr. McCabe gives emphasis to his argument by inserting in capital letters the glaring head-lines "THE RIGHT TO REGULATE RATES," but Mr. McCabe did not stop here. He introduced another head-line into his brief and designated it as follows:

"ON THE POWER OF COMPLAINANT TO HOLD A CONTRACT NOT SUBJECT TO LEGISLATION BY THE STATE,"

and then cited section 178, article 7, of the constitution of Mississippi of November 1, 1890, and said act of the legislature of the State of Mississippi of 1904 (the last clause of section 2 being inadvertently omitted), and he says (p. 35):

"If the appellee corporation came into existence under the constitution of 1890, and the municipal chapter of the State of Mississippi, enacted in 1892, it can exercise no powers, and no rights which are prohibited by the constitution and laws of Mississippi" (and maintained that it did come into existence after the constitution of 1890 was in force).

Again he says (p. 35):

"Moreover its charter was and is subject to alteration, repeal or amendment, and has been amended by the act of 1904 above quoted. It cannot complain of any of these laws which were in existence when it accepted its charter. Its rights and privileges are fixed by these laws, and the decree of the court which held, in effect, that they were not is erroneous, as will be abundantly shown, we think, by the subjoined authorities" (citing, among others, the Rogers Park Water Co. case; County of Stanislaus; Y. & M. V. R. R. Co. *v.* Adams, 180 U. S., 1, and, singular to relate, Walla Walla Water Company, 172 U. S., 1).

If the decree of the learned court below were erroneous because that learned court did not give effect to the act of 1904, which was in effect nearly two months before the final decree was rendered, and the Constitution of 1890, as Mr. McCabe so earnestly argued, then this court would have reversed this decree and this litigation would then have ended; but, notwithstanding said argument of Mr. McCabe and his citation of all these cases, some of which are again cited here, this court sustained the decree of the court below, which, as we have shown, in substance perpetually enjoined the city from "abrogating and taking away, or from assuming to abrogate or take away the franchises or contract rights of complainant" under the ordinance of November 19, 1886, which was marked Exhibit "B" to the original bill, and which held "said ordinance, contract, and franchise to be in every respect legal, valid and enforceable and binding upon said defendant," and "perpetually enjoining said defendant from infringing, ignoring, rescinding, or denying

liability under said ordinance or any of its parts," or "from disturbing or interfering with" said "rights, benefits, and privileges acquired by complainant thereunder;" and "enjoining the city from making or adopting ordinances and resolutions refusing to pay the contract price of water fixed by said ordinance, contract, and franchise until the expiration of the period prescribed in said ordinance, contract, and franchise;" and this court, in affirming this decree, said (202 U. S., page 472):

"We find no error in the decree of the circuit court enforcing the contract rights of the complainant and enjoining the city from erecting its own works during the term of the contract, but error in granting a mandatory injunction as to the sewer, and in that respect the decree will be modified, and as so modified AFFIRMED."

That this court duly considered this argument of Mr. McCabe is manifest, for the court says (page 464):

"It is further urged that the Vicksburg Water Works Company was organized after the taking effect of the constitution of Mississippi of 1890; * * * but we think the right of the Vicksburg Water Works Company was acquired under the foreclosure and sale of the contract rights conferred in the ordinance of 1886 and covered in the mortgage, as we have stated. * * * If it be true that the complainant below had a binding contract excluding competition by the city in furnishing a water supply for the period of thirty years, we think it would be a palpable injustice to the stockholders (under that provision of the constitution which prescribes that no injustice shall be done to the stockholders) to permit the competition of the city by new works of its own; which, whether operated profitably for the municipality or not, might be destructive of all successful operation in furnishing water to consumers by the private company."

Can it be doubted that the hydrant rentals which the city refused to pay were in controversy and the city held liable under the decree? And yet these rentals were as much sub-

ject to State regulation as the rates charged individuals if the regulation were held applicable.

If, therefore, we accept the view now urged by the appellant, the decree of the court below, which was affirmed in every respect but one by this court, is, so far as the rights of the Water Works Company in its relations to the private consumers is concerned, meaningless and valueless.

We apprehend that a decree so *plainly written* and so completely responsive to the main and material issues involved in this protracted litigation, cannot now be overthrown by the presentation of the very same arguments heretofore pressed upon the court, and by the citations from the very same cases to which the court has been heretofore referred, or even by the introduction of *new arguments* along the same lines.

It seems to us that the Freeport case and the Rogers Park case and the Owensboro and the Knoxville case and the Stanislaus case have been so frequently quoted, cited, and pleaded in argument in the various water-works cases and in cases of quasi-public corporations that any further citation thereof becomes almost a work of supererogation. They have been analyzed, commented upon, referred to, cited, relied on, and urged in arguments so often that the principles therein announced are *in similar cases involving like* facts for all purposes to be regarded as elementary.

The case of San Antonio Traction Co. *v.* Altgelt, 200 U. S., 304, decided prior to the last decision in this case, is sought to be made available in the argument.

We submit, that case may be regarded as favorable to appellee. It depended upon a law essentially different from the legislation of Mississippi and the facts are not the same as here presented. This court said (page 308):

"An important consideration in this connection is that the alleged contract was made twenty-three years after the constitution of 1876 was adopted, declaring that all privileges granted by the legislature shall be subject to its control. Clearly it was not deprived of that control by the fact that the

contract was not entered into by the legislature itself, but by a municipal corporation, since that is but an agency of the State, to which is delegated the power to regulate street railways and other municipal franchises."

The court holding:

"Even though an ordinance extending a franchise may be construed as a contract, it is still subject to the control of the legislature if the constitution of the State then in force provides that no irrevocable or uncontrollable grant of privileges shall be made, and that all privileges granted by the legislature are under its authority, shall be subject to its control; nor is the legislature deprived of this control because the contract was not made by it, but by a municipal corporation, as the latter is for such purpose merely an agency of the State."

When this court and the court below upheld this contract, as shown by the said decree, the principle of every one of those cases was, we submit, fully considered in the determination of the questions adjudicated by the decree. The Knoxville case, 200 U. S., 23 (wherein the Skaneateles case, 184 U. S., 354; Joplin case, 191 U. S., 150; Helena case, 195 U. S., 383, were cited), was especially referred to in the opinion. It may be pertinent to refer to some of the other cases on the subject of *res adjudicata*. This court said in Fayerweather *v.* Ritch, 195 U. S., 276:

1st. "Where it appears that a question was distinctly put in issue and the parties presented, or had an opportunity to present, their evidence, and the question was decided by a court of competent jurisdiction, private right and public welfare both demand that the questions so adjudicated shall, except indirect proceedings for review, be considered as finally settled and conclusive upon the parties."

2d. "Where in an action in a court of competent jurisdiction the validity of certain releases is put in issue by the pleadings, and no judgment can properly be rendered without determining that question, and judgment is rendered against the parties executing the releases, and who were before the trial court, the judgment in effect determines that the releases are valid, and the question of their validity is

res judicata notwithstanding no special findings in regard thereto were made by the trial judge."

In Gunter, Attorney General, *v.* Atlantic Coast Line Railroad Company, 200 U. S., 273, this court held:

"An appearance 'for and on behalf of the State' by the Attorney General pursuant to statutory provisions, in an action brought against county officers, but affecting State revenues, in this case amounted to a waiver by the State of its immunity from suit; and such immunity could not be invoked in an ancillary suit subsequently brought against the successors of the original defendant to enforce the decree.

"A decree of the circuit court of the United States, having jurisdiction of the case and in which the State appeared, that a charter exemption existed in favor of a railroad company by virtue of a contract within the meaning of the impairment-of-obligation clause of the Federal Constitution is binding upon the State as to the existence and effect of the contract during the period of exemption, and the rule that a decree enjoining the collection of a tax is not *res judicata* as to the right to collect for a subsequent year does not apply."

The court said (page 291):

"It is urged that as the taxes, the collection of which the court enjoined, were not for the same years as were the taxes with which the Pegues case was concerned, the Pegues decree was, therefore, not *res judicata*, because it related to a different cause of action. This rests upon the assumption that a decree enjoining the collection of a tax for one year can never be the thing adjudged as to the right to collect taxes of a subsequent year. But the proposition entirely disregards the fact that the decree in the Pegues case, enjoining the collection of the taxes in controversy in that case, was rested upon the ground that there was a contract protected from impairment by the Constitution of the United States, which was as controlling on future taxes as it was upon the particular taxes to which the Pegues suit related. The contention, therefore, simply asserts that a contract right of exemption was beyond the pale of judicial protection, because rights under such contract should never be sanctioned by final judicial action. Besides, the proposition is not open to controversy."

In Groton Bridge & Mfg. Co. *v.* Clark Pressed Brick Co., Circuit Court of Appeals, Eighth Circuit, 136 Fed. Rep., 27, the court held:

"Where, to an action based on a contract for the sale and delivery of brick, the defendant appears and files answer and a counter-claim in the same plea, alleging a breach of the contract claimed by the defendant to have been entered into by the parties, and then bases on such allegations a counter-claim for damages resulting from the alleged breach by the plaintiff, and, when the case is called for trial, fails to appear, and leaves his plea on record without withdrawing it, thereby imposing upon the plaintiff the production of proof to establish its cause of action, and the court proceeds on the evidence to find the issues for the plaintiff on the pleadings, the judgment therein constitutes an estoppel against a subsequent action brought by the defendant in another jurisdiction based on the same state of facts set up in the counter-claim.

"Even if the court rendering such judgment on the failure of the defendant to appear at the trial should have treated the counter-claim as withdrawn, its failure to do so would, at the most, have been only an irregularity in proceeding, and render the judgment liable to attack as void in a collateral proceeding."

Another leading case in this court is Dowell *v.* Applegate, 152 U. S., 327, wherein it was held:

"In a suit by A to subject lands of B to sale in satisfaction of his claims, a decree in the complainant's favor is final, if not appealed from, and B cannot have the same issue retried in an independent suit, based upon a title which he might have set up in the first suit, but did not."

But in this case, as we have shown, the city *insisted in its pleadings* that the contract was illegal and beyond the power of the city to make, and that the rates were unreasonable, or, rather, to use the language employed by the city, "extortionate or exorbitant."

It would hardly be possible to imagine that any one would now deny (although one is almost justified expecting any

claim from appellant in this litigation) that the city is precluded from maintaining that the pressure is insufficient; that the water furnished by the Water Company is impure and unwholesome; that the quantity supplied is not in accordance with the contract; and if the appellant is thus concluded, so far as pressure, quantity, and quality is concerned, there can be no just reason to advance, we submit, why it is not also concluded from impeaching the reasonableness of the rates which it put in issue in its answer, and which *issue* it failed to maintain and allowed complainant, unchallenged, to prove that the *rates were reasonable*.

Therefore if the pressure, quality, and quantity of the water are settled questions, it follows, we submit, beyond discussion that the *reasonableness of the rates* is also settled.

A very interesting case, because it presents a defense based upon a constitutional provision, is that of Howard *v.* City of Huron, decided by the Circuit Court of South Dakota July 17, 1874, and reported in 26 L. R. A., 493, wherein the court held:

"A judgment, if rendered upon the merits, is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which is offered to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.

"The conclusiveness of a judgment upon the rights of the parties does not depend upon its form, or upon the fact that the court investigated or decided the legal principles involved. A judgment by default or on confession is, in its nature, just as conclusive upon the rights of the parties before the court as a judgment upon a demurrer or verdict."

After the judgment *was* recovered and the writ of mandamus issued, an answer was filed on behalf of the City of Huron, wherein it was averred:

"The defendants further allege that the city council has no power or authority whatever to incur the debt created

by the contract upon which said judgment was obtained; that at the time the contract was signed, and at the time the well was completed and liability incurred, the City of Huron was indebted to more than four per cent. on the valuation of the taxable property of the City of Huron, limited by the law of the State of South Dakota, and was indebted to more than five per cent. on the value of the taxable property of the City of Huron as limited by the constitution of the said State."

The court said (page 500):

"The counsel in his petition lays down the proposition 'that it is well settled that before a debt is put into judgment it is a good defense to plead the constitutional limitation of such indebtedness.' This is undoubtedly a correct proposition of law. But it is this fact, that the constitutional limitation might have been so pleaded as a defense before judgment, though it was not, that renders the judgment conclusive upon the question as to the validity of plaintiff's claim or contract, and the liability of the defendant for its payment."

The court further said (page 502):

"But the record before us is such that we are compelled to give the judgment in this case the conclusive character that judgments ordinarily possess. From that record it appears that plaintiff duly obtained a judgment against the City of Huron upon default; that after more than two years the plaintiff seeks to collect a judgment by mandamus proceedings to compel the city council of that city to levy a tax to pay the same, and that the city now seeks to interpose a defense that could have been made in the action, but which the city failed to make. In our view of the case, the city is concluded by the judgment and cannot now interpose any such defense. It has had its day in court and it has allowed the time for interposing its defense to pass. It cannot now be permitted to plead a defense it might have pleaded at the proper time, but declined or neglected to do. It cannot now be heard to say that the contract upon which the judgment is claimed to have been founded was not a valid and binding contract against the city. The judgment estops the city from asserting the fact to be otherwise."

If, therefore, a city permits a judgment to be recovered against it by default when it has a previous defense authorized by the constitution of the State wherein the city is located, cannot reply upon such constitutional defense upon an action or proceeding on said judgment, how can a city which has been in court fully six years, contending, maintaining, arguing, and pleading that the contract which it seeks to annul is illegal, and therefore void, and that the rates charged to private consumers are extortionate and exorbitant, and in the Supreme Court urge upon the attention of the court legislation of the State and the State constitution, which it maintains authorizes the city to annul, impair, or rescind said contract, which it contends deprives the owners of said contract of its main value, the right to stand by the *fixed contract* price, the material consideration of the contract, and which largely induced it to expend its money in building a water-works system; and when on the trial of the case it fails to show wherein the contract is illegal, and introduces no proof to show that the rates are extortionate or exorbitant, and permits the water works company holding the contract, unchallenged, to establish the reasonableness of the rates to private consumers—how can that city, after decree is rendered against it by the learned circuit court and affirmed again by the Supreme Court, prohibiting it from interfering with said contract and the *contract* price, undertake with any hope of success to destroy said contract by *again* pleading what it had already pleaded, and by again trying to prove what it heretofore failed to prove, or by pleading something it never had pleaded, when, as we have shown, in the City of Huron case, a municipality is precluded from defeating or disputing a judgment against it *simply* because it *was silent* when the judgment was rendered, and not, as in this case, clamoring for relief throughout the entire proceeding, when it, the City of Huron, had a perfect defense under the constitution?

In the note to this Huron case the editor says:

"The conclusiveness of a judgment against the city when questioned in proceedings by mandamus to compel payment thereof is a question of the highest importance, especially when, as in the above case, the judgment is attacked on constitutional grounds, such as that it created an indebtedness for the city which is prohibited by the constitution. As the counsel for the city contends, the decision makes it possible to evade this constitutional limitation of indebtedness by collusion or neglect of city officers in permitting the judgment to be entered. But this consideration is not permitted by the court to control the decision. The array of authorities in the briefs and opinions of the court seems to make it undesirable to attempt to add to the subject by annotation."

We therefore respectfully contend that the question now again sought to be litigated has been conclusively settled and determined in the prior proceedings, as hereinbefore set out, and that said city cannot now overthrow the solemn adjudications of the court below as affirmed and sustained by this court.

II.

Contract Valid under the Laws of Mississippi.

We further contend that under the laws of the State of Mississippi, as construed by the highest court, and under the constitution of 1890, the contract of the Water Works Company is unassailable.

The decision in the Freeport and Rogers Park cases and other cases announcing similar principles must be construed, of course, in the light of the facts involved in those cases. In practically all of those cases, as we understand them, the State courts had either previously construed the statute or the constitution, so far as they related to said cases, and this court felt bound, as a rule, to affirm the conclusions of the State courts in the construction of their own statutes, or under

the State laws or the State constitution there was always reserved to the legislatures the irrevocable right to repeal or amend the statute; and, further, in the States where these cases originated the legislature had the irrevocable power to amend or alter the charter of the corporation organized under and claiming privileges under the State laws.

If a State legislature has reserved to itself the right to amend, repeal, or alter a State statute, and to amend or repeal a corporate charter, it can be readily maintained that by the creation of such a charter or by the enactment of such a law the legislature has not parted with its power to regulate a corporation organized under such laws or to regulate, change, modify, or vary rates authorized under such laws. A corporation which makes a contract under such laws is chargeable with knowledge thereof, and if by so doing it invites destruction by a practical confiscation of its property under a so-called regulation of its rates, it has only itself to blame. When its powers are limited by the law under which it claims a right or privilege, *that law* of course furnishes the measure of its right or privilege, and it cannot be heard to complain if that law operates to its detriment. But in the State of Mississippi, in the year 1886, there was not vested in the legislature the right to appeal, annul, or abrogate a charter procured under the laws then existing. That charter was a contract, and was protected both by the State and the Federal constitutions, and the Supreme Court of the State of Mississippi has not held, so far as we have been able to ascertain, that a charter thus obtained prior to the constitution of 1890 was subject to repeal or amendment unless such right was especially reserved in the act, and the provision of the constitution of 1890 which vested the power in the legislature to repeal or amend corporate charters expressly exempts from its operation any charter then existing and irrevocable, and was mainly intended to be prospective in its operation. The language is as follows:

"The legislature shall have power to alter, amend, or repeal any charter of incorporation now existing and *revocable*, and any that may hereafter be created, whenever, in its opinion, it may be for the public interest to do so: *Provided, however,* That no injustice shall be done to the stockholders." (Italics ours.)

There is here, then, a clear recognition of irrevocable charters and a plain prohibition against interfering with said charters.

The Vicksburg Water Supply Company, the predecessor of the Vicksburg Water Works Company, the appellee, had an irrevocable charter, and its contract with the city, as shown by the opinion of this court in 202 U. S., 453, was not subject to the provisions of the constitution of 1890, and this contract was acquired by the Vicksburg Water Works Company.

It remains, therefore, now to be ascertained, assuming for argument's sake alone that the questions now before the court are not *res judicata*, how contract rights authorized by and depending upon the laws of the State of Mississippi in force prior to the constitution of 1890 were regarded by the Supreme Court of Mississippi, and the conspicuous failure on the part of the appellant in its present brief to refer to any such decisions, affords at least a ground for the argument that such decisions could afford the appellant no aid or comfort.

It is also pertinent to observe how charter provisions are construed by the Supreme Court of the State of Mississippi.

The city of Columbus (Mississippi) was authorized by its charter "to provide the city with water for the use of the fire department, or of the citizens, by water works within or beyond the boundaries thereof."

The mayor and aldermen of Columbus leased its water works for a term of fifteen years to John Mahon. This contract was sought to be rescinded in Mahon *v.* City of Columbus, 58 Mississippi, 310. The court said (page 326):

"The water works of the city of Columbus belonged, not to the mayor and aldermen of the city, but to the citizens. They were erected at heavy expense, out of the public treasury, for the purpose of furnishing a safeguard against fires and a means of supplying water for private persons.

"It is insisted by counsel for the city that the contract was invalid in its inception, because of a failure to stipulate that it should be revocable at the pleasure of the city authorities, the argument being that it was incompetent for the latter to abdicate for themselves and their successors in office that control over the water works which was vested in them for the public good. We are not disposed to adopt this view."

Again, on page 327, the court said:

"The authority being general, and there being no specification as to the manner of operating the works after their erection, we see no reason why it might not be as well done by contract as by hiring employees or electing a manager; and while it would have been the part of wisdom to have stipulated for a removal of the contractor for cause by the city government, we cannot say that the absence of such a provision rendered the contract null."

This seems to be one of the early cases wherein a municipality found it prudent to unload a public utility upon an individual.

On March 10, 1888, there was approved the following act of the legislature (Laws 1888, p. 468):

"SECTION 1. *Be it enacted by the legislature of the State of Mississippi*, That Hon. J. M. Stone, Hon. J. P. Walker, Gen. G. Y. Freeman, Hon. Geo. G. Dillard, and Hon. T. W. Sullivan, be and they are hereby constituted a commission on the part of the State of Mississippi, with full power and authority to contract with any water works company or electric light company or gas company, or each, for a series of years, not exceeding twenty-five, for annual supplies of water, electric lights, or gas lights, or each, reasonably sufficient for public uses in the capital and various humane and charitable institutions of the State of Mississippi, such contract to provide that the yearly cost to be variable, so as not

to exceed in cost in any year the cheapest furnished by any similar company in any of the Southern States with similar surrounding circumstances; that the powers hereby granted shall also extend to the municipal governments of incorporated cities and towns, and the authorities provided by law for the management of the affairs of such cities and towns shall make such contracts for them, after first submitting the proposition to the legally qualified voters of said city or town, and a two-thirds majority thereof voting for same, UNLESS OTHERWISE PROVIDED BY THE PROVISIONS OF THE CHARTER OF ANY CITY OR TOWN." (Capitals ours.)

This act was under consideration and was construed, as well as a ten-year electric light contract, in Reid *v.* Trowbridge, 78 Mississippi 542, to which case we will hereinafter refer.

We desire to call the court's attention, first, to Light, Heat & Water Company *v.* City of Jackson, 73 Mississippi, 598. The city of Jackson is the capital of the State of Mississippi, and by an act of the legislature approved February 29, 1888, about fifteen month *after* the contract between the City of Vicksburg and S. R. Bullock & Company was made, said city was authorized and empowered to contract with any "reliable corporation, association or individual for supplying the said city of Jackson with water and electric or gas lights from year to year," etc.

Acts of the State of Mississippi, p. 234.

We now quote from said case:

"Under the authority of this act the mayor and board of aldermen of said city, on May 11, 1888, entered into a contract with the Light, Heat & Water Company of Jackson, Mississippi," which contract is set out in full in said case. It provides, so far as the material matters in this connection are concerned, substantially as follows:

"That the said water company shall have and maintain at all times for the full period of twenty years from the com-

mencement of operations by its work, a flow of pure, wholesome water proper for drinking and lavatory purposes through its mains. That said company shall not charge to consumers during the continuance of this contract exceeding the following rates, which shall be due in quarterly installments, in advance, and said company shall have the right at will to supply consumers at meter rates instead of assessed rates. The connection between the main and consumer shall be made at the expense of the consumer, and the lowest rate to one consumer, in any case shall be $5.00 per annum.

"RATES.

"The water rents charged by said company to consumers for domestic or manufacturing purposes shall not exceed the average rates charged in other cities in the State of Mississippi, similarly situated and being supplied by a like system. No connections made with mains, however, are to afford an annual rental of less than $5.00.

"10. The said company shall have power and authority to make, adopt and enforce regulations not inconsistent with law for their convenience and security, as well as that of the public in the operation of said works * * * and may require all water-takers to sign a contract to all reasonable regulations as a condition of furnishing water."

By section 12 of said contract it was provided—

* * * "The said city of Jackson hereby grants to said company the exclusive right and privilege to have, maintain and operate the franchises granted by the charter of said company in said city for the full period of twenty-five years from the date of the execution of this contract, subject, however, to prior termination by the right of said city to purchase as in this contract provided; and for the same consideration, and as the same inducement the said city of Jackson hereby rents of said company for the uses herein mentioned, the hydrants hereinbefore described, for and during the full term and period of twenty years from the completion of said works, unless the same shall be sooner terminated, as provided herein. * * * The said city hereby promises to pay to said company, or its order an annual rental of $60.00 per hydrant for each and every of

said eighty public fire hydrants located on said original mains, for the full term and period of twenty years," etc.

"The water-works system contemplated by this contract was shortly afterwards established and went into operation. On October 12, 1895, the city of Jackson filed its bill of complaint, in which it averred and charged that the contract was null and void, because the same undertook to bind the city to pay for water for a period of twenty-five years at a price and rate fixed therein, which was *ultra vires*, the said board not being empowered to make a contract for water except by the year, or 'from year to year.'"

There were other allegations made in said bill not necessary now to consider.

"The Light, Heat & Water Company demurred to the bill, assigning as grounds of demurrer the following:

"1st. The contract mentioned was not void, but valid in law," etc.

"In order to avoid any question as to the necessity for an answer to any part of the bill, and to obtain as soon as possible an authoritative determination of the controlling questions involved, it was agreed between the solicitors of the parties complainant and defendant that the following questions should be considered as raised by the demurrer, to wit:

"WAS THE CONTRACT MADE BY THE CITY AND COMPANY AND SET FORTH IN THE BILL INVALID FOR WANT OF POWER IN THE CITY TO CONTRACT FOR A SERIES OF YEARS?" (Capitals ours.)

The demurrer was overruled and appeal taken to the Supreme Court. Messrs. Calhoun & Green (Mr. Calhoun, of that firm, being now a member of the Supreme Court of Mississippi) insisted in the argument (page 615):

"The time and expense involved in establishing a system of water works and the necessity of permanency to the city, as well as the company in respect to a matter so important to its well being, show that the construction contended for by the appellee could not have been within the legislative intent. The interpretation put upon the act by the appellant is further aided by cotemporaneous legislation, from which it abundantly appears that twenty-five years was not thought

too long a time for such contracts to last (Acts of 1888, p. 468, sec. 2948, Code of 1892)."

Judge J. A. P. Campbell, former Chief Justice of the Supreme Court of the State of Mississippi, also appeared for the Water Works Company, and he argued (page 626):

"That there is not in the statute any restriction on the power to contract for supplying the city with water. The grant is general, full and comprehensive and authorized a contract to secure a supply to the city from year to year—that is, for a series of years—of water, an article of necessity always needed."

And he insists that the words "from year to year" carried "the idea of duration and continuity." He further says:

"This interpretation is strengthened by the nature of the subject to which the grant of power relates, the known conditions under which the act was passed, the necessity it was intended to relieve, and as well by cotemporaneous legislation authorizing contracts for supplying the State and other municipalities with water of equal duration with the one in question" (Acts 1888, p. 468; Code of 1892, sec. 2948).

It will thus be seen that this act of 1888 was pressed upon the attention of the court by both counsel for the Water Company. Counsel for the city also referred to this act of 1888 in their argument.

Among other things they contended as follows:

"The city council cannot bind a municipal corporation by any act which transcends their lawful powers. It is the policy of the law to require of municipal authorities a strict compliance with and observation of their powers. Any doubt or ambiguity arising out of the terms used by the legislature in making a grant of power must be resolved in favor of the public, and a power cannot be exercised where it is not clearly comprehended within the words of the act. The mayor and aldermen having exceeded their powers in making the water contract for the city, it is absolutely void, and all proceedings under it are null. It cannot be enforced by either party to the contract."

The court said:

"In view of the nature and character of the subject-matter of the contract which the board of mayor and aldermen of the city of Jackson was authorized to make by the third section of the act of February 29th, 1888, we think the contract entered into with the appellant was within the delegation of power so far as the time of its duration is involved. * * * We know that the machinery, mains and appliances required for supplying the city with water are costly to begin with, and are relatively of little value if removed when once located. Permanency of the plant is essential to the realization of any profit in the enterprise, and in cities having no greater population than that of Jackson the use of water for municipal purposes would probably be a prerequisite to secure the investment of the capital necessary to the construction of the plant. The words 'from year to year' relied upon by appellee as limiting the power of the officers of the city to the making of the annual contracts, derived much of their significance from the subject and the nature of the thing contracted for, the character of the body on which the power is conferred, the end to the attainment of which the power is to be exercised, and the extent to which such powers for such purposes are usually conferred.

"A few days after the act was passed, a commission was appointed by the legislature to contract for water for the State institutions, situated in and near the city, for the term of twenty-five years. In this act power was conferred upon all municipalities to enter into contracts, for a term not exceeding twenty-five years, for supplies of water, on a two-thirds affirmative vote of the qualified electors, but the act provided that it should not apply to municipalities whose charters already conferred the power of making contracts for water."

The act to which the court refers is the act of March 10, 1888, above quoted.

Notwithstanding that the legislative grant authorized a contract by its terms "from year to year," the court held:

"A contract made by the authorities of a municipality with a water company for supplying the city with water for

a period of twenty years, is within the power conferred on them by an act of the legislature authorizing them to contract with any reliable corporation for supplying the city with water from year to year, in view of the purpose of the delegation of power, the nature of the body on which it was conferred, the subject-matter of the contract, the large outlay for machinery and appliances, the profit of which was dependent upon the permanency of the enterprise, and THE COTEMPORANEOUS LEGISLATION, FROM WHICH THE INTENT TO AUTHORIZE A CONTRACT OF AS GREAT DURATION AS TWENTY-FIVE YEARS IS DEDUCIBLE." (Capitals ours.)

It will thus be seen that the Supreme Court of the State of Mississippi, notwithstanding this vigorous attack upon the contract and notwithstanding the precise language used for the duration of the contract, to wit, "from year to year," unhesitatingly sustained the contract—not *a part* thereof, but *all* of it—and which included an authority to furnish water to private consumers at a minimum rate of not less than $5 per annum.

This act was again under consideration in Reid *v.* Trowbridge, 78 Mississippi, 542, and we will now quote from that case.

It will be seen that by the Acts of the State of Mississippi, 1884, p. 422, the mayor and aldermen were authorized "to provide for the general welfare of the inhabitants; to provide for the lighting of said city by electric light, or other method." The City of Vicksburg, in the early part of May, 1899 [illegible], made a contract with the Vicksburg Power and Manufacturing Company for lighting the streets of the city by electricity. The city was to pay $100 per annum for each of 125 street lights and the contract was to last ten years. This contract, therefore, was entered into nearly nine years after the constitution of 1890 was in force and about eleven years after the act of March 10, 1888, above mentioned, was approved.

Certain taxpayers of the City of Vicksburg filed a bill against the City of Vicksburg and the said Railroad, Power

and Manufacturing Company in the chancery court of Warren county, May 17, 1899, to enjoin operations under the latter contract for the following causes:

"(1) Under the act of March, 1888, the city could not make such a contract, except after submitting it to the qualified voters.

"(4) It is unreasonable and oppressive.

"(7) In awarding the contract the council acted arbitrarily, without exercising any discretion whatever, which made it illegal."

It may be noted that one of the counsel in the Reid case appeared as counsel in the early proceeding in this court for the city.

The court said:

"In the case before us the question arises, to be first disposed of, whether that board (mayor and aldermen) could under the charter, and under the legislative act of 1888, make a valid contract for electric lighting without advertising for bids, and without submitting it to popular vote."

The court further said (page 54), after quoting the provisions of the charter hereinbefore set out:

"The intent of the legislature to confer the power *without restriction* appears to us to be too plain, from the collocation and order and sequence of the sections and article of the charter act, to admit of obscuration by learned argument about original power. The very last legislative action on the subject, that in the municipal chapter of the Code of 1892, shows that the law-makers thought the power to be one to be conferred or prohibited, because it expressly confers it on cities and towns and prohibits its exercise by villages." (Italics ours.)

The court then refers to said act of 1888, which, as shown, concludes: "Unless otherwise provided by the provision of the charter of any city or town;" and to the act of February 29, 1888, authorizing the city of Jackson to contract for

supplying said city with water, hereinbefore mentioned, and says:

"It is claimed now that the last clause of section 1 of the first quoted of the above acts, that approved March 10, 1888, applied to and modified the charter of the City of Vicksburg so as to make the contract here in controversy void, because not submitted to vote. In order to this result it is claimed that, in the charter of Vicksburg, it is not 'otherwise provided.' WE HOLD UNDER THE PREVIOUS REASONINGS OF THIS OPINION THAT IT IS SO 'OTHERWISE PROVIDED,' BECAUSE THE CHARTER EXPRESSLY CONFERS THE POWER WITHOUT RESTRICTION ON THE MUNICIPAL BOARD AT ANY 'REGULAR OR SPECIAL MEETING.'" (Capitals ours.)

"Besides, in construing the section of the act secondly above quoted this court expressly so held in the case of Light, etc., Co. *v.* Jackson, 73 Mississippi, 644. If the precise point was not made, the omission is quite significant of the opinion of the eminent counsel for appellee in that case that there was nothing in it. Aside from this, the question was at the very root of the cause, and was considered and decided, and it is the exact question in the case at bar, except that this case is somewhat stronger in favor of the power than the case decides.

"By section 3 of the act of February 29, 1888, the Jackson board was 'hereby authorized and empowered to contract,' while by the Vicksburg charter act the board was authorized to so contract 'at any regular or special meeting.' We presume that no charter then existent 'otherwise provided' by an express prohibition of electric lighting without vote. The grant of power without a restriction is to 'otherwise provide.'"

The court therefore held:

"Under the charter of the City of Vicksburg (Laws 1884, page 422) as amended (Laws 1886, p. 694), the municipal authorities had power to make a valid contract for electric lights without advertising for bids and without submitting the matter to a popular vote; and the power was not taken away by the act of March 10, 1888" (Laws 1888, p. 468).

Therefore we have two recent adjudications of the Supreme Court of the State of Mississippi, one expressly sustaining, first, the contract with the city of Jackson for furnishing that city and its inhabitants for twenty-five years a supply of water, fixing both the hydrant rental and the domestic rates, and, second, the other upholding a contract for lighting the City of Vicksburg for ten years, and holding, third, that the act of March 10, 1888, which conferred an express authority to contract for water, electric light, or gas lights for not exceeding twenty-five years at a fixed minimum rate, therefore for a fixed period and at a fixed rate, as construed, expressly recognized that a municipality such as Vicksburg and Jackson was by its charter expressly authorized to make a contract for a fixed period and for a fixed rate, and thus there was a legislative grant to those cities, as construed by the court, that they could make an unvarying and unchangeable rate for the fixed duration of time. There can be no difference, so far as the *right* of a legislature to regulate rates is concerned, between hydrant rentals and domestic rates, and the act of March 19, 1904, does not create any distinction.

The framers of the organic law of ~~1900~~ 1890 recognized the existence of this act, and of the existence of these charters, for they expressly provided, as we have shown, by section 178 of article 7 that "the legislature shall have power to alter, amend, or repeal any charter of incorporation now existing and *revocable*, and any that may hereafter be created;" and further provided, in the interest of fairness, honesty, and common justice, by the schedules of the constitution, as follows:

"That no inconvenience may arise from the changes in the constitution of this State and in order to carry the new constitution into complete operation, it is hereby declared that—

"SECTION 279. ALL CAUSES OF ACTION * * * AND RIGHTS OF INDIVIDUALS AND BODIES CORPORATE, AND OF THE STATE, AND CHARTERS OF INCORPORATION SHALL CONTINUE."

Thus it is clear, we respectfully submit, that the Constitutional Convention did not propose that the rights of bodies corporate vested in them by virtue of contracts with municipalities, and upon the faith of which they had expended large sums of money should be destroyed by any subsequent act of the legislature, and the legislature itself, in the very act under which appellant claims a right, to wit, the act approved March 19, 1904, above set out, expressly provides "THAT THIS ACT SHALL NOT BE CONSTRUED SO AS TO IMPOSE (IMPAIR) THE EFFECT OR OBLIGATION OF ANY VALID OR BINDING CONTRACT WITH ANY WATER WORKS COMPANY, ELECTRIC LIGHT COMPANY OR GAS COMPANY, NOW EXISTING OR HERETOFORE MADE WITH ANY INDIVIDUAL OR WATER COMPANY, ELECTRIC LIGHT OR GAS COMPANY." (Capitals ours.)

Who can doubt, in the light of the decisions in the Reid case and the City of Jackson case, *supra*, that the Water Company and the Light Company both had "valid" and "binding" contracts with a municipality—one for hydrant rentals and the other for electric lights—for an unchangeable price for a fixed period, and that this act of March 19, 1904, *applies to hydrant rentals and electric lights to the same extent as it does to domestic rates.*

Why, therefore, should only the contracts for such domestic rates be affected thereby? The city officials represent the inhabitants of the municipality in making domestic rates in the like manner and in the same capacity as it represents them in contracting for hydrants and lights for the streets, and the inhabitants are bound in any case.

Under the law as enunciated in the Reid and the City of Jackson cases, *supra*, the city had a right to contract for domestic rates, and therefore such contracts were *"valid"* and "binding," and the act of 1904, by its terms, did not apply to them.

The legislature knew it could not impair a contract pro-

tected by the State or Federal constitutions, and therefore to insert a provision in the act that it did not intend to impair such a contract, would be a needless, if not an undignified, performance.

It seems evident, therefore, the legislature proposed to exclude from the operation of the act any "valid" or "binding" contract, whether protected by said constitutions or either of them, and its use of words is significant in this connection.

It not only prohibits any interference with the *obligation* of the contract, but even with the *effect* of the contract.

This act therefore, we submit, PROTECTS, and does not *impair*, appellee's contract.

In all these decisions, acts, and constitutional enactments the court will perceive that the law-makers of the State of Mississippi and the courts were careful to protect, maintain and uphold the integrity of all contracts entered into with municipalities in good faith, and by virtue of which large sums of money had been expended.

It is the rule, we claim, in the State of Mississippi, and has been for many years, that a contract cannot be lightly disturbed, and, to use the language of the Supreme Court in Reid *v.* Trowbridge (*supra*):

"Within its charter powers the board has a discretion independent of courts, and no exercise of it will be held void for unreasonableness unless so gross as to strongly suggest fraud or corruption. The people elect their council and the courts are not chosen members of it."

It seems singular that in a discussion before this court none of these cases has received the slightest attention in the present brief of the appellants. In the very recent case, to which this Water Works Company was a party, not yet reported in the official volumes of the Mississippi Reports, but decided by the Supreme Court of Mississippi June 4, 1906, and reported in 40 Southern Reporter, p. 1011 (Grif-

fith *et al. v.* Vicksburg Water Works Co.), that court made certain rulings which are applicable here.

We do not know who prepared the "statement of the case" which appears prefixed in the opinion, but it is to be noticed that no mention in that "statement of the case" or in the opinion of the court is made of the decision of this court in Vicksburg Water Works Company, vol. 202 U. S., p. 453. The case in this court was decided May 21, 1906, but the decision of the Supreme Court was rendered June 4, 1906, about two weeks before, and it may be reasonable, therefore, to assume that the Supreme Court of the State of Mississippi did not have the opinion of this court before it. The "statement of the case" contains the following matter:

"The lower court [the Circuit Court of the United States] rendered a final decree whereby the city was enjoined, in brief, from undertaking to nullify the contract for hydrant service, from erecting a system of its own, and from contaminating the company's water by the discharge of sewerage into the same above the intake. This litigation and the decree did not raise or decide the question of the power of the city to regulate rates for private consumers."

It seems clear that this "statement of the case" misinterprets the decree, for, as we have shown, the decree perpetually enjoined the defendant from "infringing, ignoring, rescinding, or denying liability under said ordinance, contract, and franchise in any of its parts," &c.

Therefore this "statement of the case," by whomsoever prepared, is evidently incorrect. The interpretation, too, by the court of the matters alone involved in suit No. 41, we submit, is also incorrect, and probably arises from the fact, as stated to us by Mr. Crumpler, the manager of the Water Works Company, that the complete record, including the pleadings and all the evidence in No. 41, was not before the Supreme Court of Mississippi in the Griffith case. That case, however, in its declaration of the public policy of the

State of Mississippi, is to that extent, as that matter was properly before it, binding as an authority. The court said:

"We decline to follow the decision in Griffin *v.* Goldsboro Water Company (N. C.), 30 S. E., 319; 41 L. R. A., 240 (*so confidently relied upon by appellant in this case*), in holding that while a water company which accepts an ordinance by which a maximum rate is fixed is bound, and cannot exceed the same because of its contract, yet such rates are not binding upon consumers, who have a right to litigate against unreasonable charges. This holding, it seems to us, practically denies the power of a company, under a contract embodied in its charter giving the power, so to fix a rate as to bind a private consumer at all. It opens a never-ending and limitless field of litigation. It is well settled that the courts cannot fix a rate; and if, proceeding duly under statutes enacted for that purpose, the municipality cannot do so, or authorize the company by contract to do so, and thereby bind the citizens, then there is no authority by which it can be done.

"The rule is well settled that a municipal corporation represents its citizens in litigation in respect to matter of general interest as to which all citizens and taxpayers have a common and similar interest. * * * It would be an intolerable burden to the courts and to the water company, or to any other quasi-public enterprise similarly conditioned, if, notwithstanding their litigation with the municipality, and a settlement by the courts in such litigation to the extent of the right of such company, the whole question could be reopened at any time, by any private citizen who saw proper to do so, in a controversy over the most tritling amount" (citing quite a number of cases).

The court further said:

"It is not a matter open to serious discussion in this State, since the decision by this court in the case of Stone *v.* Railroad Company, 62 Miss., 607; 52 Am. Rep., 193, decided at the April term, 1885, *and before the act of 1886* (Laws 1886, p. 694, c. 358), amending the charter of Vicksburg, was enacted (AND OF COURSE BEFORE THIS CONTRACT OF NOVEMBER 18TH, 1886, WAS ENTERED INTO) that a quasi-public corporation may have a contract right to fix rates within a certain designated maximum, and that the rates so fixed are

matter of contract guaranteed by the contract clauses of the United States Constitution. In that decision the court was manifestly directing its observations to the binding character of the rates as between the company and the shippers; otherwise, the decision was practically meaningless, and without point. The philosophy of the situation is simple. Granting that the company is lawfully invested with authority to fix its rate, then such rate being so fixed by it within the maximum limit allowed by the charter, or allowed by the duly authorized ordinance, is by the courts presumed to be reasonable; and it is not permissible for each individual citizen, in every controversy that may arise, to have that question, once passed upon by the lawfully constituted public authorities charged with power in the premises, reopened and litigated anew."

The court then further said that it "did not intend to suggest any opinion or decision on the question as to whether section 13 of the ordinance of 1886 * * * was legal and constituted a valid authority to that company or not. That is one of the principal questions which the Federal court must determine in the litigation now pending before it."

We submit that question was determined and concluded by the final decree of May 18, 1904, affirmed by this court in all respects except as to the sewer.

In the syllabus to this case it is stated:

"Where a water company accepts an ordinance by which a maximum rate for water furnished to a city and its inhabitants is fixed, rates fixed by the company not in excess of the maximum are binding on consumers."

This view of the relative rights of municipal authorities and the taxpayers is also the rule in the Federal Courts.

In Spring Valley Water Works Co. *v.* San Francisco *et al.*, 124 Fed. Rep., 574 and 602, the court held:

"In a suit against a municipal corporation and its officers to enjoin the enforcement of an ordinance reducing the rates to be charged by a water company, the defendants represent the rate-payers, who are bound by the proceedings and

by an injunction issued therein" (citing, among other cases, Reagan *v.* Farmers' Loan & Trust Co., 154 U. S., 362; San Diego Land & Town Co. *v.* National City, 174 U. S., 739, and quite a number of other cases in the other Federal courts).

We therefore maintain that under the laws of the State of Mississippi, as interpreted by its highest court, this contract authorizing a charge not exceeding 50 cents per thousand gallons to private consumers is unassailable by any subsequent legislation, and that the cases cited, based upon the statutes and decisions of the courts of other States, have no applicability or relevancy here.

This court, in 202 U. S., 454, as we have shown, has also held that the contract was not affected by the constitution of ~~1890~~ 1890, and if it were a valid contract *in all of its parts* prior to the adoption of the constitution of ~~1890~~ 1890, as we maintain it was, then the constitution of 1890 and the legislature of 1904 does not affect it, *and, we further maintain, was not intended to affect it*, as we have heretofore shown.

It may be pertinent to observe that the Freeport and Rogers Park Company cases referred to by counsel for the city, not only on this appeal, but on the former appeal, involved the construction of certain statutes of the State of Illinois, a State whose legislature possessed the irrevocable right to appeal, alter, or amend any existing law, and, of course, any contract based upon that law.

The act of the legislature of the State of Illinois in force July 1, 1872, authorized cities and villages to contract with a water works company for supply of water for public use for a period not exceeding thirty years, and by another act, also in force July 1, 1872, authorized the city council to provide for a supply of water, or to authorize any person or private corporation to construct and maintain the same (a system of water works) at such rates *as may be fixed by ordinance* and for a period not exceeding thirty years.

In the case at bar even the language is different. The authority as conferred is as follows:

"To provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to *contract* with any party or parties who shall *build* and *operate* water works."

It may be observed that there could not be a profitable *operation* of a water works without the power to fix rates, and there is no *restriction* in this language upon the *power of the city to fix rates.*

In the Freeport case the hydrant rental was also involved, for "in 1896 an ordinance was passed by the city reducing the rentals of the hydrants and rates to consumers to take effect from the date of its passage," and this *ordinance* was upheld by the Supreme Court of Illinois and by this court.

There is no substantial difference, so far as the State is concerned, between a contract for hydrant rental and a contract to furnish water to private consumers; yet, as we understand this proceeding, the right to hydrant rentals is finally determined and is not now questioned, so far as we interpret the argument of appellant in the present appeal.

For it does not appear to us that it is denied that this court has clearly prohibited the city in its affirmance of the decree below, of May 18, 1904, from interfering in any manner with the hydrant rental; yet the act of 1904, if it conferred upon the city the power to regulate the rates of this water company at all, also conferred upon it the power to regulate its hydrant rental, and this act, as we have shown, was in force about two months before the rendition of the said decree and was pressed upon the attention of this court in the former appeal (202 U. S., 454), and with a persistent argument that the contract was subject to *regulation*, and in fact to annulment, because the charter of the company was acquired after the constitution of 1890 was in force, yet this court, as we contend, and apparently admitted by appellant, upheld the hydrant rentals.

III.

The Ordinance of December 8, 1903.

We submit that this ordinance is of no special importance, but nevertheless it is an interference with the rights of the company to make needful rules and regulations under section 13. Much that we have said applies also to this ordinance.

IV.

The Argument of Appellant Based on the Pleadings.

It is also insisted by the appellant that by reason of the fact certain averments were made by the appellant in its answer, and as the answer was made under oath, the unreasonableness of the flat rates, at least, charged by the water company has been established, and the decree is therefore, to that extent, erroneous.

It is immaterial whether the bill in case now numbered 79 is designated as an original or ancillary bill, the proceedings in said case 79 are for all practical intents and purposes ancillary to the proceedings in No. 41.

The bill of complaint in case 79, after setting forth the matters complained of, makes the following allegations:

"3d. Your orator would further show that under these ordinances it is impossible for your orator to do business, on account of the fact that in the event it sought to collect its lawful demands from the consumers of water it is liable to be imprisoned and its business wrecked, ruined and destroyed, and its power to carry on its business is being seriously impaired because its employees are restrained on account of the threat to deprive them of their liberty and publicly disgrace them.

"4th. Your orator would further show that its patrons are refusing to pay their water rents and only offering to pay at

the rates fixed under said ordinances passed by the defendant, and that your orator thereby has already been damaged in the sum of over twenty thousand dollars (and without relief bankruptcy of your orator is inevitable)".

The bill then prayed for general relief, and for decree "restraining defendants from enforcing said ordinances and annulling and holding them naught, and in requiring the city to perform their contract made in 1886, as aforesaid, in this respect, and from in any manner interfering with your orator's contract rights under said contract," etc.

The bill was sworn to. The bill also prayed that the defendant may be summoned at once to answer "according to the equity rule of this court."

The defendant answered under oath.

Some of the allegations of the answer are responsive to the averments of the bill and quite a number of them, we contend, are *not responsive* and present *affirmative* matter. This answer was filed about the 9th day of February, 1905. A general replication was filed July 3, 1905.

No attempt was made by the city to *prove by any witnesses* the allegations of its *answer*, and the court on the 3d day of January, 1906, rendered its final decree, reciting: "This cause coming on to be finally heard at this January term, 1906, of this court, upon the original bill of complaint, and the answer of defendant thereto, and all the exhibits which are made such, to said original bill of the complainant and said answer, and all the other pleas and proceedings in this case" (which, of course, includes the replication, etc.). Therefore it appears that the original bill, with all of its exhibits, which set forth in complete detail all prior evidence and proceedings, was in evidence before he court on the rendition of the final decree.

The appellant now says (Brief, page 44):

"Strange as it may seem, appellee, after filing a replication to such sworn answer, failed to take any testimony in order to overcome the sworn allegations of appellant's an-

swer as above set forth. The record contains no note of testimony."

And then again appellant says (Brief, page 45):

"It thus appears that after appellant had filed a sworn answer to the bill, which denied its entire equity by alleging * * * (3) 'that said rates were unreasonable and exorbitant, and that a court of equity should not aid the complainant in its efforts to exact and collect them,' appellee submitted its case for a final decree without taking any testimony whatever to overcome the responses of the sworn answer."

Again the appellant says (Brief, page 45):

"No possible comfort can be drawn from the testimony taken in the preceding case, numbered 41, as that testimony was closed before the ordinances of April 20 and May 20, 1904, were enacted. The result is that the uncontradicted responses of the sworn answer stand before the court as conclusive testimony which destroys the equity of a bill that should have been dismissed."

Some of these citations are italicized by the appellant.

When the appellant submitted to a hearing, *without taking any proof*, upon bill, exhibits, answer, and replication, then every allegation of the answer not directly responsive to the bill was unproved, and those allegations which were responsive were overthrown, we submit, by the proof introduced by appellee except the allegations relating to damages sustained, etc.

Mr. Foster in his work on Federal Practice, 2d edition, section 158, says:

"The complainant by filing a general replication admits the sufficiency as regards discovery, and as regards the form of pleading, but not the sufficiency as a defense, of the plea or answer to which it is filed, and denies every allegation in the plea or answer which is not directly responsive to the bill" (citing Humes *v.* Scruggs, 94 U. S., 22, and other cases).

We do not propose to extend this brief by analyzing the averments of the answer. It sufficiently appears, we submit, by a mere inspection thereof, that there are quite a number of averments which *are affirmative matter* and not directly responsive to the bill, and therefore *unproven.*

We are at loss to understand how appellant can so positively assume that appellee submits its case without taking any testimony to overcome the responses to the sworn answer, and practically in the same breath says "it can derive no possible comfort * * * from the testimony taken in the preceding case, No. 41, as that testimony was closed before the ordinance of May 20 and April 20 were enacted, as above stated."

That case was set out in the pleadings in its entirety, and was directly in evidence, both as an exhibit to the bill and by the fact that court considered it in rendering the final decree, and that case was the foundation upon which the bill in case 79 was based, which, we repeat, was for all practical purposes an ancillary bill.

The appellant is clearly in error when it states "that the testimony (in 41) was closed before the ordinances of April 20 and May 20, 1904, were enacted;" and this is shown *conclusively* by the record itself, which is, of course, unimpeachable evidence.

In the first place, there was no ordinance of May 20, 1904. *This is proven—*

1st. By the ordinances themselves, described in Appellants' Exhibit A to its answer (Record, p. 389).

2d. By reading the same ordinance, set out in full in the bill, which shows the word "May 20th" (Record, p 8) was a misprint, *April 20th being intended,* for it would be absurd for the mayor to approve an ordinance May 20th to take effect May 1st preceding.

3d. By the decree of February 24, 1905, restraining the enforcement of said *two* ordinances of April 20, 1904 (Record, p. 393).

4th. By the final decree of January 3, 1906, enjoining the enforcement of said two ordinances of April 20, 1904 (Record, p. 402).

The record also proves, as we have also shown in our "statement of the case," and now repeat, that the testimony in case No. 41 *was not closed before said ordinances were adopted.*

The depositions were taken on the following dates, as shown by the following pages of the record:

For Complainant.

M. O. Crumpler, sworn to February 29, 1904 (Record, pp. 269, 290, 304).

Dr. H. H. Haralson, sworn to February 23, 1904 (Record, p. 194).

Prof. A. L. Metz, M. D., sworn to January 8, 1904 (Record, p. 209).

Prof. R. W. Jones, M. D., sworn to January 7, 1904 (Record, p. 215).

H. J. Trowbridge, sworn to February 26, 1904 (Record, p. 233).

Jacob Voeinkle, sworn to February 12, 1904 (Record, p. 243).

J. M. A. Brennan, sworn to February 23, 1904 (Record, p. 245).

F. Streuby, sworn to February 17, 1904 (Record, p. 248).

E. S. Butts, sworn to February 19, 1904 (Record, p. 251).

J. B. Smith, sworn to February 19, 1904 (Record, p. 254).

Chas. Linstrom, sworn to February 25, 1904 (Record, p. 257).

David H. Herman, sworn to February 12, 1904 (Record, p. 260).

FOR DEFENDANT.

W. L. Trowbridge (mayor), sworn to April 5, 1904 (Record, p. 369).
Chester R. McFarland, sworn to March 11, 1904 (Record, p. 324).
J. J. Hayes (alderman), sworn to March 19, 1904 (Record, p. 334).
D. A. Campbell (alderman), sworn to May 4, 1904 (Record, p. 341).
C. Schuler (assistant fire chief), sworn to May 4, 1904 (Record, p. 347).
W. O. Smith (alderman), sworn to March 15, 1904 (Record, p. 353).
D. Montgomery (alderman), sworn to March 21, 1904 (Record, p. 358).
W. H. Bruser, sworn to March 10, 1904 (Record, p. 362).

All this testimony, therefore, was available, as well as said two ordinances of April 20, 1904, and said act of March 19, 1904, *before case No. 41* was heard, and it was the duty of said appellant to have asserted its right thereunder, if it had any, *before the final decree* was rendered; and, as we have already shown, the act of March 19, 1904, upon which and ordinances purport to have been based, was expressly relied on in this court on the second appeal.

The court below also had judicial knowledge of the act of March 19, 1904.

Furman *v.* Nichol, 8 Wall., 57.

The circuit court in case No. 41 had already conclusively declared and adjudicated, we submit, that the rates were reasonable, and that adjudication could not be attacked or overthrown by *one sworn answer*, nor by the oaths of five hundred witnesses; that adjudication stood for all time until reversed by this court.

Appellee, filed the former adjudication.
(rec. p. 5)
Appellant, admit the decree was rendered.
(rec. p. 378)

It is shown by the proceedings in case No. 41 that the city failed to point out any "inherent invalidity" in the contract, although required so to do by the decree of this court on the first appeal, and the record in case No. 41 necessarily embraced the decision of this court in 202 U. S., 454, wherein the attempt on the part of the city to prove as an "inherent invalidity" in the contract the right of the State of Mississippi to regulate the rates, and that the act of 1904 and the constitution of ~~1890~~ 1890 applied, were not held available, and the decree of the court below rendered on the 18th day of May, 1904, which we have hereinabove set out, and which prevented the defendant from interfering with or disturbing the contract or the rights, privileges or benefits of complainant thereunder, and from refusing to pay all moneys due and owing the Water Company thereunder, or from refusing to pay the contract price of water fixed by said contract, was affirmed in all respects except one by this court.

Therefore the complainant had before the court on the final hearing of case No. 79 not only *ample evidence*, but *conclusive evidence* of its rights, and the answer of the defendant was ineffectual, whether sworn to or not sworn to, whether supported by the testimony of one or one hundred witnesses, and did not defeat the right of complainant to relief. Even if this evidence had not been directly furnished, the court always has judicial knowledge of its own records.

"Courts will take judicial notice of their own records with reference to the prior proceedings in the case at bar."
American & English Ency. of Law (2d ed.), vol. 17, p. 925.

"An appellate court will take judicial knowledge of its own record on a former appeal."
Ibid. (note 3).

And this court has said:

"It may be said that the decree in the other suit was never pleaded, or proved, and no question of *res judicata* can be

considered against the earlier decision, as finally presented on the hearing of the latter case.

"This doubtless is technically true, but we take judicial knowledge of our own records, and if not *res judicata,* we may, on the principle of *stare decisis,* rightfully examine and consider the decision in the former case as affecting the consideration of this."

Bienville Water Supply Co. *v.* Mobile, 186 U. S., 212.

A minimum meter rate or charge is defined in Cox *v.* Abbeville Furniture Co., 54 S. E., p. 830, by the Supreme Court of South Carolina, August 9, 1906:

"The 'term minimum charge' as used in water-supply contracts, where the meter system obtains, usually signifies rate of compensation for expense and labor of being ready to supply water at will of consumer, though the supply be not used at all."

We therefore respectfully submit that if there is any fault in the failure to take proof, it rests again, as it did in the former proceedings, upon the city and not upon this company.

V.

Finally, we respectfully submit that this contract of thirty years' duration has already been shortened by over a score of years, and within a decade all of the Water Company's rights and privileges based upon this contract must cease and determine; and that necessarily, with the loss of the hydrant rentals and without contractual right to furnish the consumers in Vicksburg water at any price, the large sums of money it has expended in the operation and maintenance of its water-works system, and which, as we have shown, furnishes good and wholesome water, filtered by the voluntary establishment of a successful filtering plant—an obligation not imposed by any terms of the contract—the value of its property will be greatly depreciated. And hav-

ing also furnished the city and its inhabitants water sufficient in quantity and pressure, and with rates, both for hydrants and for private consumers, unchallenged by proof for years, and having had its rights repeatedly established in courts of competent jurisdiction, after years of unnecessary harassment by needless and expensive litigation, it ought now, in the declining years of its corporate existence, so far as the City of Vicksburg is concerned, be permitted to live in peace and comfort and without fear of continuous imprisonment and the confiscation of its property by repeated fines, and to charge the rates which it, without any necessity on its part, proved in a court of justice to be reasonable and just, for it has under its contract the power to make such rates and charges for the use of said water as it may determine, provided said rates or charges shall not exceed fifty cents for each thousand gallons, and therefore the water company has the right to make any rates—flat rates, round rates, square rates, meter rates—provided always it does not exceed fifty cents per thousand gallons.

It was incumbent upon the city, having made the charge, to show that the flat rate was more than fifty cents per thousand gallons. This was *affirmative* matter, we submit, and cannot be *sustained*, in the attitude this controversy has assumed, upon mere technicalities of pleading.

The bill in case No. 79 assailed and sought to annul the ordinances of April 18, 1904, which were manifestly based, as shown by the slightest inspection of their terms, upon rates much *less* than fifty cents for each thousand gallons. The two ordinances must be read together, and they show beyond controversy that the city wholly disregarded the contractual rate of fifty cents per thousand gallons, and would not permit a meter rate in excess of forty cents per thousand gallons, and all the so-called flat rates are necessarily based upon the assumption that no rate in excess of forty cents per thousand gallons, even if a meter rate, could be upheld.

The record shows that the city by its disposition of excremental matter has threatened the purity of the water supplied from the swift-flowing currents of the Mississippi, and thereby the maintenance of the filtering plant, though not imposed by the contract, with all its consequent expense is incumbent upon the water company.

The city has denied the validity of the hydrant rental; has sought in many ways to defeat the defendant's contractual rights, and it does now seem that justice and equity should restrain the city from any further interference with the defendant's property and contracts during the brief period that is still left of its official existence, so far as its relations with the city are concerned.

We therefore respectfully submit that the decree should be affirmed.

Respectfully submitted,

J. HIRSH,
MURRAY F. SMITH,
Solicitors for Appellee.

Supreme Court of the United States.

No. 275.—October Term, 1906.

The Mayor and Aldermen of the City of Vicksburg, Appellant, *vs.* Vicksburg Waterworks Company.	Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

[May 27, 1907.]

Cases involving the rights of the Vicksburg Waterworks Company, under the contract made between the city of Vicksburg and the company, for furnishing the water supply of the city, have been before this court in two preceding actions, viz: *Vicksburg* v. *The Waterworks Company*, 185 U. S. 65, and the *Same* v. *Same*, 202 U. S. 453.

Owing to the previous statements of the case, it is only necessary to set out enough of the facts involved in the controversy now before us to make plain the conclusions at which we arrive.

The city of Vicksburg, by act of the legislature of Mississippi, (Laws of 1886, chap. 358, sec. 5, p. 695,) was authorized "to provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties, who shall build and operate waterworks."

Acting under this authority conferred by the legislature, the city of Vicksburg made a contract with Samuel R. Bullock & Company, their associates and assigns, for the supply of water to the city and its inhabitants, which was contained in the ordinance of November 18, 1886, section 13 thereof providing that—

"The said Samuel R. Bullock & Company, their associates, successors or assigns, shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works, and to make such rates and charges for the use of said water as they may determine, provided that such rates and charges shall not exceed 50 cents for each thousand gallons of water."

The ordinance, by its terms, ran for thirty years, and Bullock & Company, as provided in section 5 of the ordinance, assigned the contract to the Vicksburg Water Supply Company, and it was duly accepted by that company. The supply company put in the works and operated until August, 1900, when the mortgage upon the property, including all the

franchises and contract rights, was foreclosed and purchased by a Mr. Crumpler, who assigned all his rights and title to the Vicksburg Waterworks Company, the appellee herein, which company has operated the works since.

The contract contained an agreement to pay a stipulated rental for certain hydrants for public use.

The legislature of Mississippi, on March 18, 1900, passed an act authorizing the city to issue bonds and build a waterworks system of its own for the supply of the city and its inhabitants, and on the 3d of July, 1900, an election was held in the city under the statute, which resulted in a vote to build or buy a waterworks plant of its own.

The city repudiated any contract relations with the company. Thereupon the company filed its bill in the United States Circuit Court for the District of Mississippi on the 14th day of February, 1901, the objects of which were thus stated by Mr. Justice Shiras in delivering the opinion of the court (185 U. S. 65):

"The bill prays for an injunction to restrain the defendant from assuming to abrogate and take away the franchises and contract rights of the complainant, and from attempting to coerce the company to sell its works to the defendant for an inadequate price, and that said act of the legislature of Mississippi, adopted on March 9, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900, be declared to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and said act, ordinance and resolution, and each of them, are alleged to be in contravention of the Constitution of the United States, in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns."

In the court of original jurisdiction the bill was dismissed for want of jurisdiction. On the appeal, 185 U. S. 65, the judgment was reversed, and this court held that there was jurisdiction, and the cause was remanded. The case went to trial upon its merits, and on May 18, 1904, a final decree was rendered, which was affirmed on appeal to this court in the case reported in 202 U. S. 453. The decree in that case, known in the record as No. 41, is given in the margin.*

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* Equity, No. 41.

Vicksburg Waterworks Company
vs.
Mayor and Aldermen of the City of Vicksburg, Mississippi.

This day this cause came to be heard in accordance with the motion of complainant and defendant filed January 12th, 1904, upon the original bill, amended and supplemental bill, exhibits, answer of defendant, proof and exhibits and the

During the pendency of the original action the legislature of Mississippi passed an act authorizing the cities and villages of the State to prescribe, by ordinance, maximum rates and charges for the supply of water, elec-

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court after hearing and attending the evidence and the arguments of counsel and being fully advised in the premises and being satisfied that the complainant is entitled to the relief prayed for in its original and amended and supplemental bills and for full relief; it is thereupon hereby ordered, adjudged and decreed:

First, that the defendants, the Mayor and Aldermen of the city of Vicksburg be and are hereby perpetually enjoined from abrogating and taking away, or from assuming to abrogate or take away the franchises or contract rights of complainant under and by virtue of the ordinances, franchises or contract of said defendants entitled, "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works," ordained the 19th day of November, 1886, approved by John W. Powell, Mayor, November 19th, 1886, being the ordinance, contract and franchise marked Exhibit B to the original bill of complaint, and said ordinance, contract and franchise being specifically and accurately set out in words and figures in the pleadings, which ordinance, contract and franchise was acquired by and is the sole and exclusive property of said complainant.

Second, that said ordinance, contract and franchise be and is hereby declared and held to be in every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts, or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by complainant thereunder.

Third, that said defendant be, and he is hereby, directed to rescind its resolution and ordinance adopted the 7th day of November, 1900, which is in words and figures as follows: "Resolved, that the Mayor be and is hereby instructed to notify the Vicksburg Waterworks Company that the Mayor & Aldermen deny any liability upon any contract for the use of the waterworks hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the City Attorney take such action as shall be necessary to determine the rights of the city in the premises."

And also to rescind the ordinance or resolution of said defendant adopted the 7th day of February, 1901, when said defendant adopted the report of the Committee on Waterworks, as set out in the pleadings.

Fourth, that the said defendant refrain from in any manner accepting the benefits of or proceeding under the act of the legislature of the State of Mississippi approved March 9, 1900, and from issuing bonds under and by virtue of said act, or any other act or ordinance, for the purpose of erecting waterworks of its own during the period prescribed by ordinance, contract and franchise.

Fifth, that the said defendant refrain from constructing waterworks of its own until the expiration of the period prescribed in said ordinance, contract and franchise, dated the 16 day of November, 1886.

Sixth, that the said defendant be, and is hereby, required to pay all moneys due

tric light and gas furnished to cities and the inhabitants thereof. Laws of Mississippi, 1904, p. 231. Section 1 of this act is inserted in the margin.*

On April 20, 1904, about one month before the rendition of the final decree in the original case, the city adopted two ordinances fixing the maximum charge for the use of water, one by what is known as the "flat rate" and the other for water measured by meters.

On December 7, 1903, the city passed an ordinance prohibiting the water company and gas company from charging damages and other penalties for failure to pay bills, until ten days after presenting the same and giving an opportunity for the payment thereof.

On the 7th of January, 1905, the water company, in view of this action by the city, filed another bill, which is the original bill in this case, and was numbered 79, in which it set forth the preceding history of the litigation, the decree of May 18, 1904, the city ordinance of December 7, 1903, and the two of April 20, 1904, and in that bill alleged its contract under the ordinance of 1886 and the former decree, and that the enforcement of the ordinances was in violation of that decree and the company's contract of 1886 and would be destructive of its business, and they prayed for an injunction. A temporary injunction was allowed, and afterwards, the case

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or owing, or that *may be* hereafter be due and owing to said Complainant under and by virtue of said ordinance, contract and franchise.

Seventh, that the said defendant be, and is hereby, perpetually enjoined from making or adopting any resolutions, or ordinance, refusing to pay the contract price of water fixed by said ordinance, contract and franchise until the expiration of the period prescribed in said ordinance, contract and franchise.

Eighth, (relates to certain sewers).

Ninth, that said defendant pay the costs of this cause to be taxed.

* Section 1. *Be it enacted by the Legislature of the State of Mississippi*, That the corporate authorities of any city, town or village now or hereafter incorporated under any general or specific laws of this state, in which any individual, company or corporation has been or hereafter may be authorized by said city, town or village to supply water, electric light or gas to said city, town, or village, or the inhabitants thereof, be and they are hereby empowered to prescribe by ordinance maximum rates and charges for the supply of water, electric light or gas furnished by such individual, company or corporation to such city, town or village or the inhabitants thereof, such rates and charges to be just and reasonable. And in case the corporate authorities of any such city, town or village shall fix unjust and unreasonable rates and charges the same may be reviewed and determined by the Circuit Court of the county in which said city, town or village may be; provided, that this act shall not be construed so as to impose (impair) the effect or obligation of any valid or binding contract with any waterworks company, electric light company or gas company now existing or heretofore made with any individual or water company, electric light or gas company.

standing on the bill, answer, and exhibits attached thereto, a final decree was rendered in the case, which final decree is set forth in the margin.*

From this decree the present appeal has been prosecuted.

Mr. Justice DAY delivered the opinion of the Court.

It is contended on behalf of the appellee that the original decree of May 18, 1904, finally disposed of all the issues between the parties, including the right of the city to make rates for water consumption to private consumers under the authority of the act of March 19, 1904, and that the present controversy is foreclosed by the decree in the former case.

While it is true that the decree is very broad, we cannot agree to the contention of the appellee that it finally disposed of the matter now in controversy. When the case was first here, reported in 185 U. S. 65, while there are expressions in the opinion affirming the validity of the contract and the authority of the city to make it, the issue really decided was as to

* This case coming on to be finally heard at this Jan'y Term, 1906, of this court, upon the original bill of complaint and the answer of the defendant thereto, and all the exhibits which are made such, to said original bill of complaint and said answer, and all of the other pleas and proceedings in this cause, together with a certified copy of the charter of the said Vicksburg Waterworks Company, which is filed in the record as evidence in the cause, also the petition of the defendant for a modification of the temporary injunction granted in this cause, so that the complainant shall not be authorized to cut off water from its patrons who refuse to pay the rates of complainant, claiming the right to have the injunction modified by virtue of the ordinances of the defendant, fixing water rates; and the motion of complainant to have said injunction granted heretofore made perpetual. And the court having heard the arguments of counsel, and being fully advised in the premises, and being satisfied that the complainant is entitled to the relief prayed for in its bill of complaint for full relief, it is thereupon finally ordered, adjudged ..... decreed:

First. That the defendant, the Mayor & Aldermen of the City of Vicksburg, is hereby denied the relief prayed for in its petition, to wit, that the injunction be modified so that the Mayor & Aldermen of the City of Vicksburg shall not be restrained from enforcing the ordinances passed by them fixing the water rates and prescribing rules and regulations of the Vicksburg Waterworks Company, and that the Vicksburg Waterworks Company shall not be permitted to cut off patrons' water, provided patrons pay the rates fixed in said ordinances.

Second. That said defendant be and is hereby enjoined from enforcing the said three ordinances described in said bill, to wit: An ordinance entitled "An Ordinance to fix and prescribe maximum rates and charges for water supplied to the inhabitants of the City of Vicksburg, whether measured by meters, and for other purposes," approved the 20th of April, 1904, an ordinance entitled "An Ordinance to fix and prescribe the maximum flat rates and charges for the supply of water to consumers in the City of Vicksburg, and for other purposes," approved the 20th

the jurisdiction of the court as a Federal court, which was sustained, and the cause remanded for further proceedings. Upon the second hearing of the case, and the appeal here, the opinion shows that the adjudication was regarded as settling the right of the Vicksburg Waterworks Company, under the contract, to carry on its business without the competition of works to be built by the city itself, as the city had lawfully excluded itself from the right of competition; and it was further held, as incidental to that controversy, in passing upon an issue made in the suit, that the Vicksburg Waterworks Company had succeeded to all the right, title, and interest of the original contracting party, and that the contract, having been made prior to the Constitution of 1890, was not controlled by its provisions. The right to recover for rentals was also directly involved, as the city had denied its liability therefor, and an accounting was prayed in the original bill and the decree specifically disposed of that issue. It is true that in the answer it was averred that the alleged contract imposed upon the inhabitants of Vicksburg an onerous and extortionate burden; "that no such contract would now be made with the Vicksburg Waterworks Company or any other company; that the rates authorized in said ordinance far exceeded the rates charged in other cities under like circumstances and, in general terms," the city denied that it was bound to the complainant by contract; "that for the many reasons therein set forth, no liability existed on the part of the city by reason of the contract."

An examination of the record in the former case shows that the only testimony taken in the case, as to the reasonableness of the rates charged

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day of April, 1904; and an ordinance entitled "An Ordinance to require waterworks, gas and electric companies to present bills before charging damages for a failure to pay them when due," approved the 8th day of December, 1903, so far as the latter relates to complainant.

Third. That the restraining order heretofore granted in this cause on the 11th day of January, 1905, be and the same is hereby made permanent.

Fourth. That the said defendant be and is hereby enjoined from in any manner interfering with the complainant's contract rights under its said contract with the City of Vicksburg entered into between Samuel R. Bullock & Company and said city under the ordinance of November 19th, 1886.

Fifth. That the defendant be and is hereby enjoined from interfering with the rules and regulations of Complainant, the Vicksburg Waterworks Company, and the water rates for the inhabitants of the city of Vicksburg now in force established by the Vicksburg Waterworks Company.

Sixth. That said defendant be and is hereby enjoined from interfering with the water rates known as the flat rates now in force established by the Vicksburg Waterworks Company.

It is further ordered, adjudged and decreed that the defendant pay all costs of this cause.

Finally ordered, adjudged and decreed this the 3d day of Jan. A. D. 1906.

to private consumers, was on behalf of the company, and tended to show that the rates charged were reasonable, and if it could be said that the pleadings put in issue the reasonableness of the rates then charged, was the right of the city to regulate rates under a subsequent law of the State necessarily involved and concluded? The determination of issues as to the right of injunction against the city building its own works, or denying liability or refusing to pay the rentals contracted for, and a finding that existing rates were reasonable, did not necessarily conclude a controversy which might thereafter arise, as to the right of the city to fix rates when the legislature of Mississippi should pass a law for that purpose, giving the city the right to regulate the same. It is to be remembered that when the bill was filed in the original case no such law had been passed; that when the act of March, 1904, went into effect the case was nearly ready for final decree, and the city passed its ordinances long after the beginning of the suit, and shortly before that decree. No supplemental bill was filed, but after the decree, in January, 1905, the present independent suit was brought, with a view to enjoining the proposed action of the city in enforcing ordinances regulating the rates by charges other than those contained in the contract.

Upon the appeal, the question seems to have been argued by the city as though made in the case, though the brief on behalf of the appellee contends that the act of 1904 was not involved. But a decree must be read in the light of the issues involved in the pleadings and the relief sought, and we are of opinion that the matters now litigated were not involved in or disposed of in the former case, and that when properly construed the decree does not finally dispose of the right of the city to regulate rates under a law passed after the contract went into effect and long after the bill was filed in the case.

Holding, then, that the plea of *res judicata* must be denied, had the city authority, under the charter of Vicksburg, passed in 1886, to make a binding contract, fixing maximum rates for water supply to private consumers for a definite period, thirty years in the present case? The grant of legislative power upon its face is unrestricted, and authorizes the city "to provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties who shall build and operate waterworks."

That a State may, in matters of proprietary rights, exclude itself from the right to make regulations of this kind, or authorize municipal corporations to do so, when the power is clearly conferred, has been too frequently declared to admit of doubt. *Los Angeles* v. *Los Angeles City Water Company*, 177 U. S. 558; *Walla Walla* v. *Walla Walla Water Company*, 172

U. S. 1–7; *New Orleans Waterworks Company* v. *Rivers*, 167 U. S. 674; *Freeport Water Company* v. *Freeport*, 180 U. S. 587–593.

In the latter case this court, following the construction of the Supreme Court of Illinois, held that where a city council was authorized to contract with any person or corporation to construct and maintain waterworks at such a rate as may be fixed by ordinance for a period not exceeding thirty years, the words "fixed by ordinance" being capable of application so as to make one ordinance endure for the period of thirty years, for which the contract was made, or to give the right to pass ordinances from time to time regulating rates, the latter construction was adopted.

In the cases generally in this court it will be found that, in determining the matter of contract, the local decisions have been given much weight and, ordinarily, followed. As this is a Mississippi contract, and the power was exercised under the authority of an act of the legislature of that State, we naturally look to the decisions of the courts of that State, particularly to such as had given construction to similar charters at the time the contract was made, with a view to determining the extent of the power conferred.

While the case now before us was pending, Griffith and others, citizens of Vicksburg, filed a bill, setting forth the city ordinances of 1903 and 1904, and asking to have them established and maintained and an injunction granted against enforcing charges for higher rates, and upon appeal the case went to the Supreme Court of Mississippi, and is reported in 40 So. Rep. 1011. In that case the Supreme Court of Mississippi held that the municipal corporation represented the citizens and taxpayers of the city, and that where a right had been adjudged as between the company and the city it would conclude private citizens, and while the court declined to pass directly upon the question here involved, because of its pendency in the Federal courts, it used this pertinent and suggestive language:

"We decline to follow the decision in *Griffin* v. *Goldsboro Water Company*, (N. C.), 30 S. E. 319; 41 L. R. A. 240, in holding that while a water company which accepts an ordinance by which a maximum rate is fixed is bound, and cannot exceed the same because of its contract, yet such rates are not binding upon consumers, who have a right to litigate against unreasonable charges. This holding, it seems to us, practically denies the power of a company, under a contract embodied in its charter giving the power, so to fix a rate as to bind a private consumer at all. It opens a never-ending and limitless field of litigation. It is well settled that the courts cannot fix a rate; and if, proceeding duly under statutes enacted for that purpose, the municipality cannot do so, or authorize the company by contract to do so, and thereby bind the citizens, then there is no authority by which it can be done.

"It is not a matter open to serious discussion in this State, since the decision by this court in the case of *Stone* v. *Railroad Company*, 62 Miss.

607, 52 Am. Rep. 193, decided at the April term, 1885, and before the act of 1886 (Laws 1886, p. 694, c. 358), amending the charter of Vicksburg, was enacted, that a quasi-public corporation may have a contract right to fix rates within a certain designated maximum, and that the rates so fixed are matter of contract guaranteed by the contract clauses of the United States Constitution. In that decision the court was manifestly directing its observations to the binding character of the rates as between the company and the shippers; otherwise, the decision was practically meaningless and without point. The philosophy of the situation is simple. Granting that the company is lawfully invested with authority to fix its rate, then such rate being so fixed by it within the maximum limit allowed by the charter, or allowed by the duly authorized ordinance, is by the courts presumed to be reasonable; and it is not permissible for each individual citizen, in every controversy that may arise, to have that question, once passed upon by the lawfully constituted public authorities charged with power in the premises, reopened and litigated anew."

The case to which the court refers in the preceding extract, *Stone* v. *The Railroad Company*, 62 Miss. 607, as having been decided prior to the enactment of the charter of Vicksburg under which the contract in question was made, did not directly involve the question of authorizing municipal corporations to make such contracts, but did maintain, after an exhaustive consideration of the subject, that a grant to a railroad company, in the charter, of a right to fix rates within maximum limits named, was a contract, within the meaning of the Federal and State Constitutions, which could not be violated by a subsequent attempt to prescribe different rates, and held that the railroad company's grant was not a renunciation of the legislative power to secure reasonable rates, but rather an exercise of that power, and, when rights were thus conferred, to that extent there was a renunciation of the right of the State to control the subject. In the course of the discussion the learned judge, speaking for the court, said:

"The power to contract is an essential attribute of sovereignty and is of prime importance. Its exercise has been productive of incalculable benefits to society, however great may be the evils incident to its injudicious employment. It cannot be denied merely because of its liability to abuse. The power to contract implies the power to make a valid contract. . . . The right to grant charters includes the right to grant such as will be upheld. Conferring power on the grantee of the franchise to fix rates of compensation at discretion, or within prescribed limits fixed by the charter, has been the common practice of the legislatures of the States of the United States from an early period of their history. The right of the corporators to exercise the powers conferred by the act of incorporation, whether to fix rates themselves or to take those fixed by their charter and to rest securely on its provisions in this respect, has hitherto been generally regarded as indisputable.

"A grant in general terms of authority to fix rates is not a renunciation of the right of legislative control so as to secure reasonable rates. Such a

grant evinces merely a purpose to confer power to exact compensation which shall be just and reasonable.

* * * * * *

"If the grant can be interpreted without ascribing to the legislature an intent to part with any power, it will be done. Only what is plainly parted with is gone. Fixing rates in a charter is a specification of what is reasonable—an exclusion of tacit or implied conditions on the subject. It is an essential part of the contract of incorporation, the most important condition of its existence, the inducing cause of its acceptance."

We are referred to other cases in Mississippi which deal directly with the extent of the power conferred upon municipal corporations in charters in general terms, some of which we may notice.

In *Light, Heat & Water Company* v. *City of Jackson*, 73 Miss. 598, the city of Jackson had filed its bill, undertaking to annul a contract binding the city to pay for water for a period of twenty years at a price and rate fixed in a certain ordinance, on the ground that it was *ultra vires* and without authority from the legislature. In that case the authority conferred was in general terms, authorizing the city to contract with any reliable corporation, association or individual for supplying the city of Jackson with water and electric or gas lights from year to year. Under authority of this general power the city undertook to make a contract with the Light, Heat and Power Company of Jackson, contracting for the furnishing of water to the public at certain annual rentals for a period of twenty years, and fixing a certain rate for annual rentals to private consumers. The Supreme Court of Mississippi dealt directly with the question: Was the contract made between the city and company and set forth in the bill invalid for want of power in the city to contract for a series of years? And the court said:

"In view of the nature and character of the subject-matter of the contract which the board of mayor and aldermen of the city of Jackson was authorized to make by the third section of the act of February 29th, 1888, we think the contract entered into with the appellant was within the delegation of power so far as the time of its duration is involved. . . . We know that the machinery, mains and appliances required for supplying the city with water are costly to begin with, and are relatively of little value if removed when once located. Permanency of the plant is essential to the realization of any profit in the enterprise, and in cities having no greater population than that of Jackson the use of water for municipal purposes would probably be a prerequisite to secure the investment of the capital necessary to the construction of the plant. The words 'from year to year' relied upon by the appellee as limiting the power of the officers of the city to the making of the annual contracts, derived much of their significance from the subject and nature of the thing contracted for, the character of the body on which the power is conferred, the end to the attainment of which the power is to be exercised, and the extent to which such powers for such purposes are usually conferred.

"A few days after the act was passed, a commission was appointed by the legislature to contract for water for the State institutions, situated in and near the city, for the term of twenty-five years. In this act power was conferred upon all municipalities to enter into contracts for a term not exceeding twenty-five years, for supplies of water, on a two-thirds affirmative vote of the qualified electors, but the act provided that it should not apply to municipalities, whose charters already conferred the power of making contracts for water.

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"A contract made by the authorities of a municipality with a water company for supplying the city with water for a period of twenty years, is within the power conferred on them by an act of the legislature authorizing them to contract with any reliable corporation for supplying the city with water from year to year, in view of the purpose of the delegation of power, the nature of the body on which it was conferred, the subject-matter of the contract, the large outlay for machinery and appliances, the profit of which was dependent upon the permanency of the enterprise, and the cotemporaneous legislation, from which the intent to authorize a contract of as great duration as twenty-five years is deducible."

Again, in the case of *Reid* v. *Trowbridge*, 78 Miss. 542, the mayor and aldermen of the city of Vicksburg had been authorized, in general terms, to provide for the lighting of said city by electric light or other method. Under this general power the city made a contract with the Vicksburg Railroad, Power and Manufacturing Company for lighting the streets by electricity, at a given rental per annum, for one hundred and twenty-five lights, for a period of ten years. The taxpayers of the city of Vicksburg filed a bill to enjoin the carrying out of the contract, alleging that the city had no authority to make such a contract without submitting it to a vote of the people under the act of March, 1888, passed subsequent to the charter, requiring submission to a vote of the people, that the contract was unreasonable and oppressive, and that the council had acted arbitrarily and without exercising discretion in awarding it. The court held that the act of 1888 had no application to the case, and, speaking of the general terms of the charter authorizing a contract for lighting purposes, said:

"The intent of the legislature to confer the power without restriction appears to us to be too plain, from the collocation and order and sequence of the sections and article of the charter act, to admit of obscuration by learned argument about original power. The very last legislative action on the subject, that in the municipal charter of the Code of 1892, shows that the lawmakers thought the power to be one to be conferred or prohibited, because it expressly confers it on cities and towns and prohibits its exercise by villages.

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"It is claimed now that the last clause of section 1 of the first quoted of the above acts, that approved March 10, 1888, applied to and modified the charter of the city of Vicksburg so as to make the contract here in

controversy void because not submitted to vote. In order to this result it is claimed that, in the charter of Vicksburg, it is not 'otherwise provided,' because the charter expressly confers the power, without restriction, on the municipal board at any 'regular or special meeting.' Besides, in construing the section of the act secondly above quoted, this court expressly so held in the case of *Light etc. Co.* v. *Jackson*, 73 Miss. 644. If the precise point was not made, the omission is quite significant of the opinion of the eminent counsel for appellee in that case that there was nothing in it. Aside from this, the question was at the very root of the cause, and was considered and decided, and it is the exact question in the case at bar, except that this case is somewhat stronger in favor of the power than the case decided.

"By section 3 of the act of February 29, 1888, the Jackson board was 'hereby authorized and empowered to contract,' etc., while by the Vicksburg charter act, the board was authorized to so contract 'at any regular or special meeting.' We presume that no charter then existent 'otherwise provided' by an express prohibition of electric lighting without vote. The grant of the power without restriction is to 'otherwise provide.'"

And the court held that under this power the municipal authorities had the right to make the contract for electric lights without advertising for bids and without submitting the matter to a popular vote, and the power was not taken away by the act of March, 1888.

In this case the learned judge, speaking for the court, further said:

"Within its charter powers, the board has a discretion independent of courts, and no exercise of it will be held void for unreasonableness, unless so gross as to strongly suggest fraud or corruption. The people elect their council, and the courts are not chosen members of it."

In the light of these decisions, and others might be cited, we reach the conclusion that, under a broad grant of power, conferring, without restriction or limitation, upon the city of Vicksburg the right to make a contract for a supply of water, it was within the right of the city council, in the exercise of this power, to make a binding contract, fixing a maximum rate at which water should be supplied to the inhabitants of the city for a limited term of years, and, in the absence of a showing of unreasonableness "so gross," as the court of Mississippi has said, "as to strongly suggest fraud or corruption," this action of the council is binding, and for the time limited puts the right beyond legislative or municipal alteration to the prejudice of the other contracting party.

While we, therefore, reach the conclusion that the former case did not adjudicate the matter, we think the contract in this respect was within the power of the council and cannot be violated consistently with the contract rights of the company by the subsequent ordinances of the city.

In this case the Circuit Court rendered a final decree practically upon the bill and answer. No testimony was taken, and all that was before the court was the bill, answer and exhibits. We think the decree goes too

far in enjoining the city from interfering with the contract right of the company to charge the rates fixed thereby, in view of the allegations of the answer, that the rates charged by the company exceeded those named in section 13 of the ordinance of 1886.

The decree should be modified, so as to enjoin interference on the part of the city during the term of this contract, with the right of the company to charge rates not in excess of fifty cents a thousand gallons to private consumers, as set forth in the ordinance.

With this modification, the decree will be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.